

**ENVIRONMENTAL PROTECTION
AIR QUALITY PERMITTING
AIR QUALITY MANAGEMENT
AIR AND ENVIRONMENTAL QUALITY ENFORCEMENT
Open Market Emissions Trading**

Proposed Repeal of Rules: N.J.A.C. 7:27-22.5, 30.7, and 30.20

Proposed New Rules: N.J.A.C. 7:27-8.28, 30.5, 30.7, 30.11, 30.17, 30.19, 30.20, 30.24, 30.25, 30.26, 30.27, 30.29

Proposed Amendments: N.J.A.C. 7:27-1.32, 8.1, 8.3, 8.4, 8.17, 8.20, 16.5, 16.17, 18.5, 18.11, 19.2, 19.6, 19.19, 19.20, 19.21, 19.23, 19.24, 19.25, 22.3, 22.18, 22.22, 30.1 through 30.4, 31.6, 30.8 through 30.10, 30.12 through 30.16, 30.18, 30.21 through 30.23, 30.28, 30.30, and 31.6; and N.J.A.C. 7:27A-3.10

Authorized by: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 26:2C, especially 26:2C-8 and 26:2C-9.8

DEP Docket Number: 12-99-06/698

Proposal Number: PRN 1996-

A public hearing concerning this proposal will be held at 10:00 a.m. on Thursday, August 5, 1999 at:

First Floor Hearing Room
Department of Environmental Protection
401 East State Street
Trenton, New Jersey

Submit written comments by Friday, August 20, 1999 to:

Michael Marotta, Esq.
Attention: DEP Docket No. 12-99-06/698
Office of Legal Affairs
Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

Interested persons may obtain a copy of the proposed amendments through the following methods:

1. The proposed rule amendments may be downloaded electronically from the DEP's Air Quality Regulations Bulletin Board. The compressed file, OMETP2PR.ZIP, contains WordPerfect 5.1 and ASCII documents and is located in file area #35 (Air; Props, Adopts & Notices). The data line number for the Bulletin Board is (609) 292-2006. (Data bit: 8; Parity: N ; Stop bit: 1.)

2. The proposed amendments may be inspected during normal office hours at the DEP's public information center at 401 E. State Street in Trenton, or at one of the DEP's Regional Enforcement Offices at the following locations:

Central Region:
Horizon Center, CN 407
Robbinsville, NJ 08625-0407

Metropolitan Region:
2 Babcock Place
West Orange, NJ 07052-5504

Northern Region:
1259 Route 46 East, Building 2
Parsippany, NJ 07054-4191

Southern Region:
20 East Clementon Road
3rd Floor, Suite 302
Gibbsboro, NJ 08525-1175

3. The proposed amendments may be inspected at one of the following public libraries:

Trenton Public Library
120 Academy Street
Trenton, NJ 08608

Atlantic City Public Library
1 North Tennessee Avenue
Atlantic City, NJ 08401

Newark Public Library
5 Washington Street
P.O. Box 630
Newark, NJ 07102-0630

Alexander Library
Rutgers University
169 College Avenue
New Brunswick, NJ 08903

Camden Free Public Library
418 Fredericks Street
Camden, NJ 08103

New Brunswick Free Public Library
60 Livingston Avenue
New Brunswick, NJ 08901

Joint Free Public Library
Morristown & Morris County
1 Miller Road
Morristown, NJ 07960

4. The proposed rule amendments may be requested from the Department by e-mailing aporter-@dep.state.nj.us, or by telephoning (609) 777-1345.

The proposed new rules and amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The Department's proposal follows:

Summary

Introduction

The New Jersey Department of Environmental Protection (Department) is proposing new rules and amendments at N.J.A.C. 7:27-30, its Open Market Emissions Trading (OMET) rule, and related amendments to several other rules in order to enhance and extend New Jersey's OMET program. The new rule and amendments would create additional opportunities for the generation of VOC and NO_x discrete emissions reduction (DER) credits, add new provisions for the generation and banking of greenhouse gas (GHG) credits, allow additional uses of VOC and NO_x DER credits (including "permit insurance" uses), increase the portion of VOC and NO_x DER credits that must be retired for the benefit of the environment from 10 percent to 20 percent for the new "permit insurance" uses, allow the conversion of NO_x Budget allowances and banked credits in the Emission Offset Program to be converted to DER credits, reorganize to make it easier to reference, and restate the required procedures for generating, transferring, verifying, voluntarily retrieving and using credits in an enhanced "check list" format certain provisions of the current rule to make it easier to apply, and provide new procedures for circumstances not addressed in the original OMET rule.

The OMET Program was established by the Department to provide incentives for voluntary reductions of air contaminant emissions. It was also established to provide alternative means for regulated business and industries to achieve compliance with their air pollution control obligations, when conventional control methods were not available or not cost effective. It was intended that both the economic viability of the State and the achievement of clean air goals would be promoted through the OMET. The purpose of these amendments is to expand and enhance the OMET Program, so as to more effectively achieve these goals.

New Jersey is currently the only state in the eastern United States to have an Open Market Trading Program, although several other states may be considering developing such a program. Michigan and Texas, however, have adopted program's similar to New Jersey's OMET Program.

New Jersey's OMET Program, by legislative directive and by design, maximizes the involvement of third parties. Persons who voluntarily wish to reduce emissions may generate credits under the rule, without prior government approval. Persons who hold credits may trade them at will, and these persons are often aided in these transactions by the services of credit brokers. Private parties (New Jersey licensed Certified Public Accountants and Professional Engineers) serve as verifiers of the credit generation. Any holder of a credit may voluntarily retire it. And, under the terms of this rule regulated entities may use credits for compliance. All these parties rely on the credit registry, operated by a private party selected through an open competitive bid process, which tracks the credits. All these parties will be affected by the proposed enhancements to the OMET Program.

Rulemaking history

On August 2, 1995, Governor Whitman signed legislation (P.L. 1995, c.188, § 8) which directed the Department to establish an emissions trading and banking program.

Consequently the Department proposed a rule which would establish an emissions trading program, the Open Market Emissions Trading (OMET) Program on February 20, 1996 (see 28 N.J.R. 1147(b)). In the proposal, the Department explained that the rulemaking represented Stage One of its response to the legislative directive, in which the basic framework for the OMET program would be established, and that it would be followed by a Stage Two proposal which would further develop the OMET Program. The Stage One proposal, which set forth procedures for the generation, banking, transfer, use, and retirement of NO_x and VOC credits, adhered to the principles in the State legislation at P.L. 1995, c.188 and was based largely on USEPA's August 1995 proposed open market trading rule (OMTR) (60 FR 39668). The Stage One OMET proposal was adopted on June 3, 1996 (see 28 N.J.R. 3414(a)), and the rules (referred to herein as "the current OMET rule") became operative on August 2, 1996. The Stage One OMET Program established pursuant to these rules is referred to herein as "the current program".

The proposal set forth herein shall be referred to as "the Stage Two rule proposal". As early as June of 1996 the Department established an Emissions Trading Workgroup to advise the Department on the implementation of the current program and the development of the Stage Two rule proposal. The Emissions Trading Workgroup was open to all interested parties, and included representatives of industry (prospective generators and users of credits), environmental and public interest groups, credit brokers and consultants, as well as representatives of the New Jersey Department of Transportation, the United States Environmental Protection Agency (USEPA), and the Department. Over the next three years the Emissions Trading Workgroup met (usually) monthly to discuss OMET Program progress and issues.

Additionally, in January, 1998, the Commissioner formed a "Blue Ribbon Panel," chaired by former Assemblywoman Maureen Ogden, the Assembly sponsor of P.L. 1995, c.188, to aid the process of making recommendations to the Department for the development of the OMET Program. Blue Ribbon Panel members were appointed by the Commissioner, and their focus was on identifying potential modifications to the current OMET rule which would improve the environmental benefits of the program while lowering the cost of compliance and increasing flexibility for business.

The Stage Two rule proposal incorporates many of the recommendations made by the Emissions Trading Workgroup and the Blue Ribbon Panel. It also incorporates recommendations made by the Greenhouse Gas Advisory Group, an advisory body open to any member of the interested public, formed to advise the Department on the design of a greenhouse gas (GHG) emissions banking program. In developing the Stage Two rule proposal the Department has also taken into account comments received from the USEPA, the New Jersey Department of Transportation, and Mosakin International Corporation, the private party selected through an open competitive bid process to be the operator of the registry that serves the OMET Program. Finally, the Stage Two rule proposal incorporates new Departmental initiatives for the enhancement of the OMET Program, as well as corrective measures based on lessons learned by the Department from its first three years' experience with the implementation of the OMET Program.

Further, the Department can already foresee that, once the regulatory action on these proposed revisions to the current OMET rule is complete, further revisions to the rule will be needed in the future. There are, for example, pending OMET Program related issues that were not taken up in this rulemaking. For example, there is the question as to whether there should be any limit on the lifetime of a credit that remains unused in the registry; the Department solicits public comment on this issue. However, these future rules will not only reflect evolving State policy, they will also be a response to new federal directives. USEPA is currently preparing to propose revisions to its Economic Incentive Program (EIP) rules. Once the EIP revisions are adopted, it will be the responsibility of the State to ensure that the OMET Program is consistent with this new federal guidance.

Overview

The following is an overview of the key elements of the Stage Two OMET rule proposal. Following a discussion of general changes that are reflected throughout the proposal is a section by section discussion of other changes. For reference, a listing of all new and amended sections is provided below:

SECTION	TITLE
7:27-1.32	Request for an adjudicatory hearing
7:27-8.1	Definitions
7:27-8.3	General provisions
7:27-8.4	Applications
7:27-8.17	Changes to existing permits and certificates
7:27-8.20	Seven-day-notice changes
7:27-8.28	Delay of testing
7:27-16.5	Marine tank vessel loading and ballasting operations
7:27-16.17	Facility-specific VOC control requirements
7:27-18.5	Standards for use of emission reductions as emission offsets
7:27-18.11	Interface with other trading programs
7:27-19.2	Purpose, Scope and Applicability
7:27-19.6	Emissions Averaging
7:27-19.19	Recordkeeping and recording
7:27-19.20	Fuel Switching
7:27-19.21	Phased compliance - repowering
7:27-19.23	Phased compliance - use of innovative control technology
7:27-19.24	MEG alerts
7:27-19.25	Exemption for emergency use of fuel oil
7:27-22.3	General provisions
7:27-22.18	Source emissions testing and monitoring
7:27-22.22	Seven-day-notice changes
7:27-30.1	Purpose and scope
7:27-30.2	Definitions
7:27-30.3	General provisions
7:27-30.4	DER credit generation: general requirements

7:27-30.5	DER credit generation: computation of credits
7:27-30.6	DER credit generation: limitations
7:27-30.7	DER credit generation: Notice of Generation
7:27-30.8	Registry
7:27-30.9	DER credit transfer
7:27-30.10	DER credit verification
7:27-30.11	Voluntary retirement of DER credits
7:27-30.12	VOC and NO _x credit use: general requirements
7:27-30.13	VOC and NO _x credit use: computation of DER credits
7:27-30.14	VOC and NO _x credit use: required, authorized and prohibited uses
7:27-30.15	VOC and NO _x credit use: Notice of Intent to Use
7:27-30.16	VOC and NO _x credit Use: Notice of Use
7:27-30.17	GHG credit use
7:27-30.18	General notice requirements
7:27-30.19	Submission of notices
7:27-30.20	Amendment of notices
7:27-30.21	Geographic scope of trading
7:27-30.22	Recordkeeping
7:27-30.23	Public availability
7:27-30.24	Standards for quantification protocols
7:27-30.25	Contents of quantification protocols
7:27-30.26	Hierarchies of quantification techniques
7:27-30.27	Interface with other trading programs
7:27-30.28	Compliance responsibilities
7:27-30.29	Invalidation and cancellation of DER credits
7:27-30.30	Penalties
7:27-31.6	Interface with the open market emissions trading program
7:27A-3.10	Civil administrative penalties for violation of rules adopted pursuant to the Act

General Changes

Terminology: The current rule uses the term “discrete emission reduction” or “DER” to refer both to the tradeable unit in the OMET program (i.e., a credit) and to the emissions reductions on which the credit is based. The Stage Two rule proposal would instead use two separate terms to refer to these two different concepts: “discrete emission reductions” and “DER Credit.” So throughout the Stage Two rule proposal the term “DER” is changed to “DER credit” where the proposed rule refers to a credit, and to “discrete emission reductions” where the proposed rule refers to the emission reductions on which a credit is based. Additionally, to reflect that a DER credit may be based on NO_x, VOC, or GHG emissions reductions, the Stage Two rule proposal would add the terms “NO_x credit”, “VOC credit,” and “GHG credit”, and these new terms are used throughout where reference to a credit based on reductions of a specific air contaminant is intended.

Naming of notices: In the Stage Two rule proposal, the names by which various notices are referred to are proposed to be simplified. For example, instead of “Notice and Certification of DER Generation,” such a notice is referred to herein as a “Notice of Generation.”

Reorganization of Subchapter: In order to make locating provisions on certain topics easier, new sections are proposed to be added for voluntary retirement of credits, requirements for submission of notices, amendment of notices, content of quantification protocols, interface with other trading programs, and cancellation or invalidation of credits. Also, the single section in the current rule on quantification protocols has been divided into three sections: one on standards for protocols, one on required contents of a quantification protocol, and one on hierarchies to be referred to in selecting a technique for quantification of emissions. Correspondingly, certain current rule provisions have been relocated to place them logically within the new sections.

Greenhouse Gas Bank: Throughout the Stage Two rule proposal provision is made for the generation of GHG credits, and for the banking, transfer, and voluntary retirement of these credits. Although a new “placeholder” section has been reserved at N.J.A.C. 7:27-30.17 for GHG credit use, no authorized uses of GHG credits are proposed. Also, at N.J.A.C. 7:27-30.3 and elsewhere throughout Subchapter 30 text has been modified to make it clear that the use provisions of this subchapter would not apply to GHG credits.

Voluntary retirement: The Stage Two rule proposal differentiates throughout Subchapter 30 between retirement of credits which is a purely voluntary action and retirement of credits which is a required part of each use to ensure that there is a benefit for the environment. To do this, the word “voluntary” is proposed to be inserted whenever the type of retirement under consideration is that which is fully voluntary.

Ozone season: The current RACT rules in certain places erroneously reference September 15 as the final day of the ozone season, rather than September 30. This creates uncertainty for credit generators and users under the OMET Program as to whether they are complying with the requirements to differentiate between credits generated (or used) during the ozone season and outside the ozone season. To remedy this, the Stage Two rule proposal would replace “September 15” with “September 30” and (if applicable) “September 16” with “October 1” at N.J.A.C. 7:27-16.5 and at N.J.A.C. 7:27-19.2, 6, 19, 20, 21, and 25.

Miscellaneous changes: There are also a number of miscellaneous changes proposed. Reasons for these changes include relocating certain provisions to place them more logically in the Stage Two rule proposal, clarifying the language in the current rule, making the stylistic presentation (in terms of format, grammar, capitalization, etc.) of the rule text consistent with Office of Administrative Law’s guidelines, and correcting cross-references. Also, in an effort to present each concept that is the same as, or corresponds to, a concept presented elsewhere in language that is the same as, or is parallel to, that used in the original presentation of the concept, changes are proposed in order to achieve this consistency of usage.

Other Changes, Section-by-Section:

N.J.A.C. 7:27-1.32 Request for an adjudicatory hearing

The proposed amendments to N.J.A.C. 7:27-1.32 would allow a generator or holder to request a contested case hearing if they believe themselves to be aggrieved with respect to a finding that a credit is invalid. The proposed amendments to N.J.A.C. 7:27-1.32 also clarify that a person who is aggrieved by a decision of the Department may apply for hearing on appeal from that decision. Such a hearing is not granted in all cases, however. A hearing on appeal from a decision of the Department will be granted only upon a finding that certain conditions are met. These conditions are that the person is an applicant, registrant, or permittee and that the person is aggrieved by a decision that denies an application or registration, that imposes a condition of approval the person objects to, that revokes or withdraws a previously issued approval, or that denies the request for a stay.

N.J.A.C. 7:27-8.1 Definitions

The proposed amendments to N.J.A.C. 7:27-8.1 would revise the definition of “greenhouse gas” to make it consistent with the definition proposed for N.J.A.C. 7:27-30.1. They would also amend the definition of “potential to emit” to clarify that, in the determination of the potential to emit of a source or a facility, the owner or operator’s holdings of DER credits generated pursuant to N.J.A.C. 7:27-30.4 or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7, as well as emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8, shall not be taken into consideration.

N.J.A.C. 7:27-8.3 General provisions

The proposed amendments to N.J.A.C. 7:27-8.3 would add a new subsection at (l) which establishes that a permittee, who fails to perform timely testing or who operates equipment without required controls functioning, is required to compensate with DER credits, in addition to paying any penalties that may be levied.

Unless required testing is performed, the Department is unable to establish that permit limits are being met. This proposed requirement to compensate with DER credits for testing delays is intended to compensate for excess air emissions which may be occurring. The amendments would add another new subsection at (o) to establish the conditions under which a permittee may use DER credits as an alternative means of complying with a permit limit.

N.J.A.C. 7:27-8.4 Applications

The proposed amendments to N.J.A.C. 7:27-8.4 would delete current subsection (r) to remove the implication that a permit applicant can or should obtain approval from the Department, if the applicant intends to generate DER credits. A new subsection (r) is proposed which would apply to a permittee who applies for and is issued a revised permit with a less stringent BACT or LAER limit, or a less stringent limit reflecting the requirement established to incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a). New subsection (r) would require the permittee to compensate for the increase in allowable emissions, due to the less stringent limit, through use of DER credits. The intent of the proposed provision is to

provide a disincentive to permit applicants to providing assurances to the Department and the public (before new or modified equipment is constructed or installed) that proposed new or modified equipment will meet emission limits that they can not meet; and then (after the equipment is already built, and therefore cannot readily be redesigned or modified) seeking approval from the Department of a less stringent limit. The intent is also, in cases where a less stringent limit is subsequently approved, to achieve the same level of air quality protection as was originally committed to, through use of DER credits.

N.J.A.C. 7:27-8.20 Seven-day-notice changes

The proposed amendments to N.J.A.C. 7:27-8.20 would modify subsection (b) so that it includes a list of the circumstances under which a seven-day-notice may be used. To complete the list, subsection (i) is proposed to be relocated to (b)2, and a new provision pertaining to DER credit use is proposed to be added at (b)3. Related amendments are proposed at (d) and (e) to clarify that their requirements apply only to (b)1.

N.J.A.C. 7:27-8.28 Delay of Testing

A new section 28 is proposed which would pertain to permittees who delay the performance of required testing. New subsection (a) sets forth procedures whereby a permittee may request Departmental approval for the delay. New subsection (b) advises such permittees that they may include a waiver of their right to assert that the source's emissions during the period of delay are different than those measured through the eventual testing. And new subsection (c) would advise permittees who delay testing that they may be required to provide compensation through use of DER credits.

N.J.A.C. 7:27-16.17 Facility-specific VOC control requirements

The proposed amendments to N.J.A.C. 7:27-16.17 would revise subsection (m) such that the requirement to compensate with DER credits for an alternative emission limit in an alternative VOC control plan would apply to persons who applied to the Department after August 2, 1996, rather than to persons who were issued an approval after that date.

N.J.A.C. 7:27-18.5 Standards for use of emission reductions as emission offsets

The proposed amendments to N.J.A.C. 7:27-18.5 would change the ozone season of the emission offset program to match the ozone season of the open market emissions trading program, May 1 through September 30.

N.J.A.C. 7:27-18.11 Interface with other trading programs

The proposed amendments to N.J.A.C. 7:27-18.11 would establish the conditions under which an emission offset can be converted to DER credits.

7:27-19.13 Facility-specific NO_x emission limits

The proposed amendments to N.J.A.C. 7:27-19.13 would revise subsection (i) such that the requirement to compensate with DER credits for an alternative maximum NO_x emission rate would apply to persons who applied to the Department after August 2, 1996, rather than to persons who were issued an approval after that date.

N.J.A.C. 7:27-19.23 Phased compliance - use of innovative control technology

The proposed amendments to N.J.A.C. 7:27-19.23 would clarify that it is DER credits that must be used to compensate for excess NO_x emissions.

N.J.A.C. 7:27-19.24 MEG alerts

The proposed amendments to N.J.A.C. 7:27-19.24 would clarify that the ratio to be used for determining the compensation required for excess emissions during a MEG alert is based on the amount of the emission increase.

N.J.A.C. 7:27-22.3 General provisions

The proposed amendments to N.J.A.C. 7:27-22.3 would add three new subsections (tt), (uu) and (vv). Subsection (tt) would establish the conditions under which a permittee may use DER credits as an alternative means of complying with a permit limit. Subsection (uu) would apply to a permittee, who applies for and is issued a revised permit with a less stringent BACT or LAER limit, or a less stringent limit reflecting the requirement established to incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a). New subsection (uu) would require the permittee to compensate for the increase in allowable emissions, due to the less stringent limit, through use of DER credits. The intent of the proposed provision is the same as that set forth above for similar provisions at N.J.A.C. 7:27-8.4(r). And new subsection (uu) would establish that a permittee, who fails to perform timely testing or who operates equipment without required controls functioning, is required to compensate with DER credits, in addition to paying any penalties that may be levied. This provision is similar the provision set forth at N.J.A.C. 7:27-8.3(l).

N.J.A.C. 7:27-22.18 Source emissions testing and monitoring

The proposed amendments to N.J.A.C. 7:27-22.18 would add three new subsections (k), (l), and (m). New subsection (k) sets forth procedures whereby a permittee may request Departmental approval for the delay. New subsection (l) advises such permittees that they may include a waiver of their right to assert that the source's emissions during the period of delay are different than those measured through the eventual testing. And new subsection (m) would advise permittees who delay testing that they may be required to provide compensation through use of DER credits. These three subsections are similar to provisions also proposed at N.J.A.C. 7:27-8.28.

N.J.A.C. 7:27-22.22 Seven-day-notice changes

The proposed amendments to N.J.A.C. 7:27- 22.22 would relocate the provision at N.J.A.C. 7:27- 22.22(c)4 pertaining to use of DER credits for compliance to N.J.A.C. 7:27- 22.22(d)2, and clarify that the seven-day-notice procedures must be met for any increase, for a permitted source, in actual emissions due to the use of DER credits. Both (c) and (d) are subsections in which changes which are seven-day-notice changes are given. However, subsection (b) prohibits changes listed in (c) from being seven-day-notice changes if the change results in an increase in any emission limit. Since the proposed “permit insurance” uses of DER credits, set forth in these amendments to N.J.A.C. 7:27-30, would allow an increase in any emission limit and would require notice of the use to be submitted as a seven-day-notice, there would have been a conflict between the provisions of subsection (b) and the amendments to Subchapter 30. To avoid this conflict, these proposed amendments would move the reference to use of seven-day-notice procedures for compliance through emission trading from (c) to (d). Related amendments are proposed at (h) and (i) to correct or add cross references.

N.J.A.C. 7:27-30.1 Purpose and scope

The proposed amendments to N.J.A.C. 7:27-30.1 would broaden the scope of the rule to include the generation and banking of greenhouse gas (GHG) credits.

N.J.A.C. 7:27-30.2 Definitions

As discussed above, the proposed amendments to N.J.A.C. 7:27-30.2 would modify the definition of the term “discrete emission reduction” to make clear it refers to the emission reductions on which a credit is based and would add a new defined term “DER credit” to refer to the tradeable unit in the OMET program.

To reflect that a DER credit may be based on NOX, VOC, or GHG emissions reductions, the proposed amendments would add and define the terms “NOx credit,” “VOC credit,” and “GHG credit.”

The definition of the term “emission source” is proposed to be revised to reflect that it also includes nonroad sources, and a definition of the term “nonroad source” is proposed to be added. The definition of the term “area source” is also proposed to be revised to include reference to nonroad sources.

Reflecting that the scope of the rule is enlarged to encompass GHG credit generation and banking, the proposed amendments to N.J.A.C. 7:27-30.2 would add definitions of “greenhouse gas,” of “GHG credit,” and of “carbon equivalent” and “global warming potential,” which are terms used in reference to GHG credits.

Certain terms would be added that are used in the context of generating DER credits. This includes the term “fleet” as fleet owners are proposed to be allowed to generate credits. Also the term “useful life” is proposed to be added, as it would be used in the context of determining the period of time for which one could generate credits based on the replacement of an existing source.

Certain terms would be added that are used in the context of a proposed new means of using DER credits. This new means is “permit insurance,” and a definition of this term is proposed. Also definitions are proposed for “ceiling rate,” which is a user source’s maximum emission rate when DER credits are being used for permit insurance; for “calendar quarter” which is used in the context of determining the number credits required for a permit insurance use; and for “Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)’ guidance document” which is used in the establishment of criteria for whether a permit insurance use may continue for longer than one year.

The term “complete” is proposed to be added and is used to emphasize the responsibility of anyone submitting a notice under the subchapter to include all required items in the notice.

The term “emissions quantification protocol” is proposed to be replaced with the simpler term “quantification protocol,” and the definition is revised to reflect that different protocols are needed for a Notice of Generation, a Notice of Intent to Use, and a Notice of Use.

Miscellaneous clarifying revisions are proposed to the definitions of the terms “activity,” “batch,” “curtailment,” “economic output,” “generation period,” “generator,” “generator source,” “oxides of nitrogen,” “registry,” “shutdown,” “stationary source,” “surplus,” and “use period.”

Definitions of the terms “AP-42” and “fugitive emissions,” previously incorporated by reference, would be added to the rule for the ease of the reader. Also an explanation of “BTU” is proposed to be added.

And the terms “air quality control region,” “attainment area,” “electric generator,” and “normal source operation” are proposed to be deleted as they would no longer be used in the rule.

N.J.A.C. 7:27-30.3 General provisions

Since no uses for GHG credits are proposed in these amendments and new rules, subsection (a) is proposed to be revised to affirm that a DER credit represents a tradeable quantity of emission reductions, and the current language describing a credit as a limited authorization to emit has been moved to N.J.A.C. 7:27-30.12, where it applies only to VOC and NO_x credits.

Additionally, the list of Department addresses set forth in the current rule at N.J.A.C. 7:27-30.3(c) is proposed to be relocated to the new “Submission of notices” section at N.J.A.C. 7:27-19; and the address of the registry set forth in the current rule at N.J.A.C. 7:27-30.3(d) is proposed to be relocated to the “Registry” section at N.J.A.C. 7:27-8.

The information in the current subsection (e) as to the amount of emissions (in tons) represented by a credit is proposed to be relocated to the definitions of VOC, NO_x, and GHG credits. Instructions in current subsection (e) as to how to perform rounding is relocated to the rule’s computation sections at N.J.A.C. 7:27-30.5 and 13. The remaining text in current subsection (e) is proposed to be recodified as subsection (c) and is changed to clarify that, in addition to being transferred, whole DER credits may also be generated, verified, retired or used.

N.J.A.C. 7:27-30.4 DER credit generation: general requirements

The current subsection (a) is proposed to be replaced with new subsections (a) and (b). New subsection (a) would establish the criteria a person must meet to be able to generate a credit, and new subsection (b) would establish five categories of exceptions to the general principle that it is the owner or operator of a generator source who is authorized to be the generator of credits based on that source's emission reductions. Within these exceptions, the new rule proposes that additional categories of persons would be authorized to generate credits, including owners of fleets and by persons who implement test and repair programs for motor vehicles, and by the producers of reformulated or redesigned consumer or commercial products.

A new subsection (c) is proposed which would authorize the agent for signatories to a collective agreement to be a credit generator, rather than the signatories themselves. For example, if municipalities or school boards were to enter into a collective agreement that authorized an agent to arrange for the implementation of energy efficiency measures in the school or municipal buildings under their jurisdiction, it is the person authorized to act as the agent pursuant to the collective agreement, not the individual municipalities or school boards, who is authorized to generate credits.

A new subsection (d) is proposed that advises generators that, except as provided under the permit insurance provisions at N.J.A.C. 7:27-30.14(d) and (e), a new or modified permit must be obtained before the emission reduction strategy can be implemented, if the strategy is subject to the permitting requirements at N.J.A.C. 7:27-8 or 22.

Current subsection (b) is proposed to be recodified as subsection (e). A proposed new subsection (f) would establish that reductions of a compound that may be classified as either a VOC or a GHG, can be used as the basis for generating either VOC credits or GHG credits, but not both. Current subsection (c) is proposed to be recodified as subsection (g) and is proposed to be changed to clarify when a generator may use the same generation strategy to generate credits in successive generation periods over multiple years.

N.J.A.C. 7:27-30.5 DER credit generation: computation of credits

Current N.J.A.C. 7:27-30.5 is proposed to be replaced with a new section 30.5. The new section would reorganize the instructions for calculating the number of credits generated into a two-step process where first the amount of emission reductions is determined and secondly the number of credits generated is determined. Also the computational instructions have been generalized so that they can be applied to mobile and nonroad sources as well as stationary point sources.

New subsection (c) would give the basic formula to be followed to calculate the amount of emission reductions on which credits may be based. The proposed formula would reflect the fact that the first step in determining the amount of these reductions is to calculate the difference between baseline emissions and actual emissions during the generation period. The three methods to be considered in determining baseline emissions are laid out in new subsection (d). New paragraph (d)1 would set forth the method which is based on allowable emissions; a new subparagraph (d)1ii would

establish that, if a new or revised permit is required for the emission reduction strategy, it is the prior permit limit (not the limit in the new permit) that is to be taken into consideration in determining the lowest allowable emission rate which applies to the generator source. New paragraph (d)2 would set forth the method which is based on historical emissions; the historical emissions level must be normalized for any difference between the level of economic output during the historical baseline period and the generation period. In new paragraph (d)2 the method to be used to perform this normalization would be set forth. New paragraph (d)3 would set forth the method which is based on measurement of emissions.

New subsections (e), (f) and (g) are proposed to clarify how to determine the time period to be used in determining a stationary source's historic emissions and to determine the values to be used for the source's historic emission rate, historic activity level, historic hours of operation, and historic level of economic output.

A new subsection (h) would explain the conditions under which a generator, who is generating credits from a single emission reduction strategy over multiple years, may continue to use year after year the same value for "historic emissions" as the generator used during the initial year of credit generation.

A new subsection (i) would consolidate into one place within the rules all the provisions within the rules which, if applicable, would require the discounting of the amount of emission reductions on which credits may be based.

A new subsection (j) would set forth the methods to be used to convert the quantity of emission reductions calculated under (c) and (i) into the number of DER credits generated.

A new subsection (k) would provide instructions for generators of GHG credits on how to convert pounds of a given greenhouse gas to pounds of carbon equivalent, as GHG credits are based on amounts of carbon equivalent.

And a final new subsection (l) would establish that, if part of the generation period falls within the ozone season and part outside the ozone season, calculations must be performed separately for the ozone season and for the period outside the ozone season for VOC and NO_x.

N.J.A.C. 7:27-30.6 DER credit generation: limitations

Several changes are proposed to subsection (a) which lists types of emission reductions which may not be used as a basis for generation of a DER credit; and a new subsection (b) is proposed which lists additional types of emission reductions which may not be used as a basis for generation of a DER credit, but which applies only to VOC or NO_x credits, not to all DER credits.

Current paragraph (a)4 is proposed to be divided into two paragraphs ((a)4 and 5) and examples are added to the new (a)4 to clarify what is and is not covered by the phrase "an emission reduction which has been used under any other emissions trading program."

Current paragraphs (a)5 and 6 are proposed to be relocated to paragraphs 1 and 2 in proposed new subsection (b).

To ensure that applicable permit requirements for HAPs are not by-passed, a proposed new paragraph (a)6 would establish that emission reductions that are accompanied by an increase in a source's potential emissions of a HAP from a level below a threshold level to a level above the threshold may not be used as a basis for generation of a DER credit.

Additional new paragraphs at (a)9 through 12 would provide clarification on four other categories of emission reductions which may not be used as the basis for a DER credit. The first of these are reductions from significant highway or transit projects; these reductions cannot be used as a basis for generating credits as they are already relied on in the SIP. The second are reductions that are accidental or due to a chance event such as a weather change; these reductions cannot be used as to do so would be in contradiction with the principle established in the current OMET rule at N.J.A.C. 7:27-30.4(a) (and proposed to be recodified in these amendments at N.J.A.C. 7:27-30.4(a)1) that DER credits are generated by a person implementing an emission reduction strategy. The third are reductions that do not occur in New Jersey. The Department does not propose to recognize these reductions as the basis for a credit; the reductions occur outside the Department's jurisdiction, and they may well be reflected in other states' inventories. And the fourth are reductions from an emission source that has operated less than one year or from a redesigned or reformulated product that has been distributed, stored or sold for use in New Jersey for less than one year; these reductions cannot be used as these sources or products would not yet have an historical baseline from which emissions are reduced.

Current subsection (b), which contains the provisions for early credit generation, is proposed to be recodified as a paragraph at (b)3 (where they would apply only to VOC and NO_x credits), and a new subsection (c) is proposed which sets forth the early credit generation provisions which would apply to GHG credits. Current subsection (c) is similarly proposed to be recodified as a paragraph at (b)4.

Prohibitions pertaining to generation of credits based on reductions of fugitive emissions, that are implied in the current rule at N.J.A.C. 7:27-30.4(a), are explicitly stated in a new subsection (d).

Finally, a new subsection (e) would establish that, when the emission reduction strategy is the replacement of equipment or control apparatus, no DER credit can be claimed once the useful life of the replaced equipment is over.

N.J.A.C. 7:27-30.7 DER credit generation: Notice of Generation

Current N.J.A.C. 7:27-30.7 is proposed to be replaced with a new modified and reorganized section 30.7. Current subsection (b) would be divided into two subsections: (a) which would contain the general requirements for a Notice of Generation, and (b) which would establish the timeframes for notice submittal and address the consequences of late submittal.

A new subsection (c) is proposed which would clarify that in certain cases a single Notice of Generation may include emission reductions attributed to more than one emission source, such as in the case of emission reductions from the implementation of energy efficiency measures.

Proposed new subsection (d) is a recodification with modification of current subsection (b). New subsection (d) is a consolidated listing of all items which must be included in a Notice of Generation and would not only incorporate items that are in current subsection (b), at N.J.A.C. 7:27-30.16(c) and at N.J.A.C. 7:27-30.20(c)1 and 2, but would also add new items. These new items include a demonstration that the person submitting the notice is the person authorized under N.J.A.C. 7:27-30.4(b) to be the generator of the credits; specification of the type of DER credits being generated (for example, VOC credits or NO_x credits); for GHG credits, disclosure as to whether or not the emission reductions have also been filed under the federal program for Voluntary Reporting of Greenhouse Gases; if the credits are based on a conversion of NO_x Budget Program allowances or reductions banked under the Emission Offset Program, a statement indicating this, plus for NO_x credits based on conversion of NO_x Budget Program allowances, a copy of the Allowance Transfer Form indicating that the allowances are retired; if the emission reduction strategy is the replacement of equipment or control apparatus, the dates the replaced source commenced operating and the date of the end of its useful life; and for credits based on energy efficiency measures, a statement as to whether or not the implementation was subsidized in whole or in part by funding derived from the societal benefits charge levied pursuant to Section 12 of Electric Discount and Energy Competition Act at N.J.S.A. 48:3-60.

N.J.A.C. 7:27-30.8 Registry

Current subsection (a) is proposed to be recodified, with revisions, at N.J.A.C. 30.12(c), and is proposed to be replaced with a general statement that states the purpose of the section.

The Department has designated Mosakin International Corporation, a private entity selected by the Department to serve as the operator of the registry. Identification of the operator of the registry is proposed to be relocated to a new subsection (b) from N.J.A.C. 30.4(d) in the current rule.

Current subsection (b) is proposed to be recodified as subsection (c); and current subsection (d) is relocated before current subsection (c). Current subsection (c) is proposed to be recodified as subsection (e) and is modified to address amendments, in addition to notices, and would add more detail to the procedures the operator of the registry would follow in processing notices. For example, if a Notice of Verification indicates that part, but not all, of the credits in a batch are verified, this subsection would direct the operator of the registry to designate within the registry each credit in the batch as being “verified” or “not verified.”

A proposed new subsection (f) would require that the operator of the registry post in the registry electronic copies of Notices of Generation, Notices of Intent to Use, and Notices of Use, so that the notices may be examined and/or downloaded by any interested person. A proposed new subsection (g) would establish procedures for the operator of the registry to follow should the Department or the EPA find a verification defective. A proposed new subsection (h) would establish

notification procedures for the operator of the registry to follow should a credit that has been used be cancelled or lose its status as “verified.”

(Note: the OMET registry is publicly available on the world wide web at “www.omet.com”.)

N.J.A.C. 7:27-30.9 DER credit transfer

Each time a credit is transferred from one person to another, this transfer needs to be entered into the registry, in order for complete tracking of each credit from its generation to its final disposition to occur. Such comprehensive tracking not only provides the service of enabling any interested person to determine who is a holder of credits, but it also is needed to maintain the integrity of the trading program, and to ensure that a credit is not used more than once. Therefore, a proposed new subsection (a) would establish the requirement to submit a Notice of Transfer in order to effect a transfer of a credit from a transferor (the person who currently holds the credit) to the transferee (the person who receives the credit from the transferor). Current subsection (a) is proposed to be recodified, with revisions, as (b).

The user’s obligation, set forth in current subsection (b), to hold the documentation listed in current subsection (a) is proposed to be relocated, with modifications, to N.J.A.C. 7:27-30.19(d)3.

Current subsection(c) is proposed to be modified to more comprehensively list the information which must be included in a Notice of Transfer. Included in the proposed modifications to (c) is clarification that the full cost of the transaction, including any associated service fees, shall be included in the amount given in a Notice of Transfer as the purchase price.

A proposed new subsection (d) would prohibit the transfer of a credit if it has been used, retired, cancelled, or found to be invalid.

N.J.A.C. 7:27-30.10 DER credit verification

Current subsection (a) is proposed to be replaced with a similar new subsection (a) which would add clarification that, in addition to credits being verified under this rule by a New Jersey-licensed professional engineer or certified public accountant, a set of credits was verified by the Department on April 25, 1995 prior to the promulgation of the current OMET rule. The modifications to subsection (a) also would create the potential for the Department to agree, in an interstate agreement, to recognize verifications of credits generated in other states, if the verifications are performed in accordance with the procedures of the generating state.

Current subsection (b) is proposed to be modified to clarify that a verifier is not considered independent if the generator is owned by or is subject to the control or direction of the verifier or the verifier’s employer; or if the employer of the verifier is owned by or is subject to the control or direction of the generator.

Current subsections (c) and (d) are proposed to be modified to clarify that a verifier, in performing a verification, must consider all the credits in the batch, and make a determination as to whether none, some, or all the credits can be verified.

Current subsection (e) is proposed to be recodified at N.J.A.C. 7:27-30.29. A new subsection (e) is proposed which would provide a comprehensive list of the required contents of a Notice of Verification. This new section would incorporate the items listed in the current subsection (d) and would add items including the following: a requirement to disclose the person for whom the verification is being performed; if only part of the batch can be verified, a requirement to explain why all the credits cannot be verified; and a requirement to disclose whether or not the verifier or the verifier's employer holds any credits in the batch or has a fiduciary relationship with the person for whom the verification is being performed, the generator, or the holder of any credit in the batch.

A new subsection (f) is proposed which would establish that a credit is not verified if a substantive change is made to the Notice of Generation after a verification is performed. A new subsection (g) is proposed which would allow multiple verifications. And a new subsection (h) is proposed which would establish procedures to be followed if the Department or EPA determines that a verification is defective.

N.J.A.C. 7:27-30.11 Voluntary retirement of DER credits

A new section 11 is proposed which would set forth the requirements pertaining to voluntary retirement of credits. The Department anticipates that environmental groups and private individuals may voluntarily retire emission credits in order to ensure that the emissions reductions represented by the credits remain permanently removed from the air. The Department also recognizes that, under the Electric Discount and Energy Competition Act, P.L. 1999, c. 23, electricity suppliers may elect to retire credits and to reflect this in the environmental disclosure they carry out pursuant to the provisions of that Act.

New section 11 would incorporate the provisions set forth in the current rule at N.J.A.C. 7:27-30.11(j) and would add new provisions. The new provisions include the following: a Notice of Retirement shall include the serial numbers of the credits being retired and certification by the retiree; credits being retired do not need to be verified; a Notice of Retirement may not be amended to increase or decrease the number of credits being retired; when credits are being used, a Notice of Retirement shall not be submitted for the retirement of the 10 percent (or, if the use is a "permit insurance" use, 20 percent) of the credits being used for the benefit of the environment, as this is a mandatory part of the use as is covered by the Notice of Use; a Notice of Retirement may not be withdrawn; and no credit that has been retired may be subsequently transferred or used.

N.J.A.C. 7:27-30.12 DER credit use: general requirements

Current section 11 is proposed to be recodified, with modifications, as section 12.

Two new subsections are proposed at (a) and (b). Proposed new subsection (a) establishes the general principle that VOC and NO_x credits (but not GHG credits) may be used in accordance

with this section, and proposed new subsection (b) sets forth the concept, relocated to this subsection from N.J.A.C. 7:27-30.3(a) in the current rule so that it applies to VOC and NO_x credits (but not to GHG credits), that a VOC or NO_x credit is a limited authorization to emit.

Current subsection (a) is proposed to be recodified as subsection (c); however, current subsection (a) refers a reader to provisions at N.J.A.C. 7:27-30.8(a), whereas the proposed new (c) would set forth those provisions, with revisions, directly within subsection (c). Current subsections (b), (c), and (d) are proposed to be recodified as (d), (e), and (f), and clarification is proposed to be added to (f) to explain that a use may continue over multiple use periods.

The provisions in current subsection (e) pertaining to due dates for submission of Notices of Intent are proposed to be recodified with revisions at N.J.A.C. 7:27-30.15(b); and the remainder of current subsection (e), which sets forth certain constraints on when a use period may begin, is proposed to be recodified with revisions as new subsection (g). The revisions to new subsection (g) would clarify that, where a Notice of Intent to Use is required to be submitted, the use period may in no case begin until a Notice of Intent to Use is submitted. Furthermore, new subsection (g) makes clear that that in certain circumstances a use period may not begin until a specified number of days after the Notice of Use is submitted: 30 days after, if the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge; and 7 days after, if the user source is subject to seven-day-notice requirements under permitting rules.

A new subsection (h) is proposed which would establish the user's obligation to retire 10 percent (or, if the use is a "permit insurance" use, 20 percent) of the total number of the credits used for the benefit of the environment.

Current subsection (f) is proposed to be recodified, with revisions, as (i). This subsection establishes the deadlines by which the user must hold the DER credits being used. As revised, the subsection would establish that, generally, the user must hold DER credits no later than the day before they are used. And if credits are not held the day before they are used, the requirement for users to multiply by three the number of credits the user would be required to use would be recodified at (i). However, in two cases DER credits must be held earlier, at the time the Notice of Intent to Use is submitted. One of these cases is when the user intends to use the credits for permit insurance; the other such case is when the user is compensating for a less stringent BACT or LAER limit, or a less stringent limit reflecting the requirement established to incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a). Such a user must hold the full amount of credits to be used during the use period at the time the Notice of Intent to Use is submitted. In both these cases the requirement to hold the full amount of credits when the Notice of Intent is submitted can be met because the exact number of credits that will be used is known at that time. This requirement would eliminate any uncertainty that the user's credit obligations will be met. Furthermore, for a use of credits to comply with emission offset requirements, new subsection (i) would acknowledge that the requirements for holding credits in such a case are established in the emission offset provisions at N.J.A.C. 7:27-30.14(g).

Current subsection (g) is proposed to be deleted, as it would be superceded by the revised quantification guidance proposed at N.J.A.C. 7:27-30.13; and current subsection (h) is proposed to

be recodified with revisions within a new section on invalidation and cancellation of DER credits at N.J.A.C. 7:27-30.29.

Three new subsections are proposed at (j), (k) and (l). Proposed new subsection (j) explains that credits held for a use, but not in fact used, may be traded, voluntarily retired, or used for other purposes, once the Notice of Use is submitted. Proposed new subsection (k) establishes an obligation for a user to replace a credit if it has been cancelled or found to be invalid after it has been used. Similarly, proposed new subsection (l) establishes an obligation for a user to remedy a circumstance where the verification of a credit is found to be defective after the credit has been used.

Current subsection (i) is proposed to be recodified, with revisions, as (m); and current subsection (j) is proposed to be recodified, with revisions, within the new voluntary retirement section at N.J.A.C. 7:27-30.29.

Two new subsections are proposed at (n) and (o). Proposed new subsection (n) establishes that a person who submits a Notice of Intent to Use must, to complete the record and to provide documentation, also submit a Notice of Use, even if no credits were used. Proposed new subsection (o) informs a permittee who wants more flexibility than allowed under the permit insurance provisions at N.J.A.C. 7:27-30.14(d) and (e) that the permittee may apply for a 15-year plan, pursuant to N.J.S.A. 26:2C-9.2.c(3).

Current subsection (k) is proposed to be recodified, with revisions, at N.J.A.C. 7:27A-3.

N.J.A.C. 7:27-30.13 DER credit use: computation of DER credits

Current section 12 is proposed to be recodified, with modifications, as section 13 .

Current subsection (a) is proposed to be revised to indicate the two types of calculations for which guidance is provided in this section.

Current subsection (b) is proposed to be replaced with a new subsection (b) which sets forth the procedures to be followed to calculate the number of credits that need to be held (for certain types of uses) at the time the Notice of Intent to Use is submitted.

Three new subsections at (c), (d), and (e) are proposed which set forth the procedures to be followed to determine the number of DER credits that were used during a use period.

And a final new subsection (f) would establish that, if part of the use period falls within the ozone season and part outside the ozone season, calculations must be performed separately for the ozone season and for the period outside the ozone season for VOC and NO_x.

N.J.A.C. 7:27-30.14 DER credit use: required, authorized and prohibited uses

Current section 13 is proposed to be recodified, with modifications, as section 14.

Current subsection (a) is proposed to be revised to modify, in paragraphs 1 and 2, the date after which the requirement to compensate with credits would apply. The proposed revised paragraphs would have the requirements apply only to submissions made to the Department after August 2, 1996, the date the current OMET rules became operative. (Corresponding changes are also proposed at N.J.A.C. 7:27-16.17(m) and 19.13(i) to the dates as given in those subsections, so that they would correspond to the modification proposed for paragraphs 1 and 2.) Also three new paragraphs are proposed to be added to subsection (a) which would reflect new required uses that would be established elsewhere under these proposed amendments. New paragraph 5 would cite the requirements, set forth at N.J.A.C. 7:27-8.4(r) and 22.3(uu), which would mandate compensation with credits for the increase in allowable emissions, when a BACT or LAER limit in a permit is made less stringent because the originally authorized permit limit cannot be met, or when a permit limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a) is made less stringent because the originally authorized permit limit cannot be met. New paragraph 6 would cite the requirements, set forth at N.J.A.C. 7:27-8.3(l) and 22.3(vv), which would make compensation with credits (in addition to any penalties that may apply) required for certain delays in emissions testing. The purpose of the new uses established in paragraphs 5 and 6 is to compensate the environment for additional air pollutant emissions that may be released. These uses are not penalties. Should in any case a penalty also apply, compensation with DER credits as required under paragraphs 5 and 6 does not relieve a permittee for responsibility also to pay the penalty. New paragraph 7 would cite the requirements, set forth at N.J.A.C. 7:27-8.3(l) and 22.3(vv), which would make operation of equipment without required control apparatus or while the control apparatus fails to function properly. A credit surcharge of 1.5:1.0 applies to a Class 3 “permit insurance” use pursuant to N.J.A.C. 7:27-30.13(d)3iv, and this surcharge is applicable in lieu of the emission source being subject to additional penalties for operating after the testing failure.

A new subsection (b) would affirm that DER credits may be used in full or partial settlement of a monetary penalty.

Current subsection (b) is proposed to be recodified as subsection (c). Current paragraph 5 is proposed to be deleted as the State has no mandatory requirements for employer trip reduction programs. And two new paragraphs are proposed to be added as examples of authorized uses: new paragraph 3 which would allow credits to be used to comply with State VOC content requirements for architectural coatings and for consumer or commercial products; and new paragraph 6 which would allow credits to be used to comply with certain federal NO_x standards that apply to municipal waste combustors.

Two new subsections (d) and (e) would establish authority for permittees, under the conditions listed in (d), to use credits to comply with permit limits through the alternative compliance mechanism of “permit insurance.”

Proposed new subsection (e) lists the three classes of permit insurance: Class 1, where actual emissions from existing equipment or control apparatus may under certain conditions exceed a permit limit due to a change in operation; Class 2, where a permittee under certain conditions may operate new or modified equipment, even though the Department has not yet approved the permit application;

and Class 3, where a permittee under certain conditions may operate equipment, even though the equipment is not able to meet the applicable permit limits.

Proposed new subsection (f) would establish that a person may use DER credits as part of an affirmative defense demonstration to show that the person has taken all reasonable steps to minimize emissions.

Current subsection (c) is proposed to be recodified as subsection (g) and is revised to state more clearly the conditions and requirements that apply to any use of DER credits to meet the emission offset requirements at N.J.A.C. 7:27-18.

Current subsection (d), which sets forth purposes for which DER credits may not be used, is proposed to be recodified as subsection (h) with revisions. The OMET Program is a State program, and compliance with under the State program does not relieve a person from also meeting applicable federal requirements. Therefore paragraph 1 would be expanded to specify that DER credits may also not be used to avoid the applicability of federal new source review requirements, federal significant deterioration requirements, and federal operating permit requirements. An exception would be added to Paragraph 2 to allow municipal waste combustors to use DER credits to comply with certain federal NOx emission standards, as these federal rules specifically acknowledge the ability of New Jersey owners and operators to comply with the federal NOx standard using DER credits. And a new paragraph 8 would be added that specifies that DER credits may not be used to avoid having a facility become a major facility.

Current subsection (e) is proposed to be recodified as subsection (i) with revisions. Paragraph 1 would be expanded to clarify that increased emissions of HAPs from other sources, both on-site and off-site, as well as from the source itself, must be taken into consideration in determining whether or not a use may result in an increase in the emission of any HAP which is greater than de minimis.

Proposed new paragraphs 2 and 3 would add two more circumstances under which use of DER credits would be prohibited. Paragraph 2 would prohibit use of DER credits if the use would result in an increase in the source's potential emissions of any HAP from below a threshold level set forth at N.J.A.C. 7:27-8, Appendix I, to a level above the threshold; and paragraph 3 would prohibit use of DER credits if the use resulted in emissions of any HAP above an applicable limit, including a permit limit.

Finally, a new subsection (j) would advise permittees that the Department, at its discretion, may deny any specific Class 3 permit insurance use.

N.J.A.C. 7:27-30.15 DER credit use: Notice of Intent to Use

Current section 14 is proposed to be recodified, with modifications, as section 15.

Current subsection (a) is proposed to be revised to state more fully the general requirements for the section.

The requirements and procedures governing late notices, set forth in the current rule at N.J.A.C. 7:27-30.11(e) are proposed to be recodified, with revisions, in a new subsection (b).

A new subsection (c) is proposed which would clarify that in certain cases a single Notice of Intent to Use may apply to a group of stationary sources, to multiple units of product, or to a fleet of vehicles.

Current subsection (b) is proposed to be recodified with modifications at subsection (d), and new subsection (d) is proposed to provide a consolidated listing of all items which must be included in a Notice of Intent to Use. New subsection (d) would not only incorporate, with revisions, items that are in current subsection (b) and applicable items at current N.J.A.C. 7:27-30.16(c), but would also add new items. These new items include a requirement to explain why the user is using the DER credits; a requirement to estimate the maximum number of credits that will be used or, if the user is required to hold all credits to be used at the time the notice is submitted, to give the number of credits that will be used, together with identifying information for the credits held for the use, such as their serial numbers; if emissions of any HAPs may increase as a result of the use, the requirement to give the name of these HAP specie(s); for “permit insurance” uses, the requirement to provide the items required in the “permit insurance” provisions for such a use; for an emission offset use, a copy of the legally binding commitment from credit generator(s) to provide the needed credits; a requirement that the user provide statements that the use is not prohibited by law, that the quantification protocol provided meets all applicable requirements; also, if the user is required to hold all credits to be used at the time the notice is submitted, a requirement that the user provide statements that calculations have been performed properly, that the user holds the required number of credits, and that the number of credits used will not exceed the number of credits held; for “permit insurance” uses, a requirement that the user provide statements that the use will not cause air pollution as defined in N.J.A.C. 7:27-5 and that the source’s actual emissions will not exceed the specified “ceiling rate”; and for a use of credits to meet emission offset requirements, a requirement that the user provide a statement that the use is approved in a cited permit.

Current subsection (c) is proposed to be recodified, with revisions, at N.J.A.C. 7:27-30.20. And a new subsection (e) is proposed which lists three types of uses for which submittal of a Notice of Intent to Use would not be required, as the user in these three cases (when credits are used for settlement of penalties, as part of an affirmative defense, or for compensation for excess emissions during a MEG alert) can not reasonably be expected to have intended to use credits before the use period.

N.J.A.C. 7:27-30.16 DER credit use: Notice of Use

Current section 15 is proposed to be recodified as, with modifications, as section 16.

Current subsection (a) is proposed to be revised to state more fully the general requirements for the section.

Current subsection (a) is proposed to be revised to provide a consolidated listing of all items which must be included in a Notice of Use. Current paragraphs 1 and 2 would be recodified at

N.J.A.C. 7:27-30.19(d). Current paragraph 3 would be recodified as paragraph 1 and revised to apply only to paragraphs 1 through 6 at N.J.A.C. 7:27-30.15(d). Current paragraph 4 would be recodified, with revisions, as new paragraphs 9 and 10; and current paragraphs 5 and 6 would be recodified, with revisions, as subparagraph 8ii and iv. A new paragraph 2 would require the reporting of the number of credits used and represents a recodification of current N.J.A.C. 7:27-30.16(c)5. A new paragraph 3 would require the identification of credits used (for those uses for which this was not already done in the Notice of Intent to Use) and represents a recodification of current N.J.A.C. 7:27-30.16(c)6. A new paragraph 4 would require the reporting of the amount (if any) of the increase in emissions of any HAP. A new paragraph 5 would require the submission of demonstrations that credits were held by the date they are required to be held and, for uses where the credits must be held when the Notice of Intent to Use is submitted, that the maximum emissions authorized by the notice was not exceeded. A new paragraph 6 would require additional demonstrations, if the use is a permit insurance use, that the amount of emission increases did not exceed what is allowed. A new paragraph 7 is a recodification, with revisions, of current N.J.A.C. 7:27-30.16(c)4; new subparagraph 8i corresponds to a similar requirement at new N.J.A.C. 7:27-30.15(d)11; and new subparagraph 8iii represents an affirmation that the requirements of paragraph 7 have been met.

A new subsection (c) would clarify how the requirements of (b) for Notices of Use are modified for users that are exempted under N.J.A.C. 7:27-30.15(e) from submitting a Notice of Intent to Use. A new subsection (d) would clarify that used credits may not be subsequently traded, retired, or again used.

N.J.A.C. 7:27-30.17 GHG credit use

Proposed new section 17, which would identify authorized uses for GHG credits, is reserved, and no uses for GHG credits are proposed to be established in this rulemaking. Also, all prospective GHG credit generators should be advised that there is no basis for any presumption that GHG credits banked under New Jersey's OMET Program may "count" as early reductions in any federal trading program for GHG emissions which might be established in the future. Further, even if a future federal program were to allow credits banked under New Jersey's OMET Program to be taken into account, there is no assurance that the value the credits would be allowed would be equivalent to the value they have under the New Jersey OMET program.

N.J.A.C. 7:27-30.18 General notice requirements

Current section 16 is proposed to be recodified, with modifications, as section 18.

Subsections (a), (b), and (c) are proposed to be revised to broaden the applicability of the sections to also include Notices of Transfer, Verification, and Retirement. The items to be included in notices that are listed in current subsection (c) are proposed to be recodified, with revisions at N.J.A.C. 7:27-30.7, 15 and 16, and three new items that would apply to all notices are proposed to be listed instead, including a new requirement to include in the name of a contact person from whom interested members of the public can obtain information.

A new subsection (d) would list the information that is required to be included in a Notice of Generation, a Notice of Intent to Use, or (if applicable) a Notice of Use to identify the generator source or user source. New subsections (e), (f), and (g) would set forth the certification language to be used for notices. A new subsection (h) would establish the responsibility for a person who submits a notice to amend it to correct any error.

N.J.A.C. 7:27-30.19 Submission of notices

A new section 19 is proposed which would set forth all requirements for submission, including to the registry, to the Department, and in certain cases to the New Jersey Department of Transportation, to regional transportation planning organizations, to the Department's emission offset bank, and to the federal Land Manager. Proposed subsection (b) would require the submittal of complete Notices of Generation, Notices of Intent to Use, and Notices of Use electronically to the registry.

N.J.A.C. 7:27-30.20 Amendment of notices

A new section 20 is proposed which would specify the procedures for amending notices. It would also establish elements in certain notices which may not be amended including the following: the identity of the person submitting a notice; in any Notice of Generation, the specific dates of the generation period; in a Notice of Intent to Use, the user source(s), the first day of the use period (and for a permit insurance use, the last day of the use period as well, together with the ceiling rate), the maximum number of DER credits that may be used during the use period, and the specific DER credits being held for the use (identified by their serial numbers); and in a Notice of Retirement, the number of credits retired (this number may neither be increased nor decreased). These are elements that are fundamental to the purpose and/or meaning of the notice and therefore should not be subsequently changed.

N.J.A.C. 7:27-30.21 Geographic scope of trading

Current section 17 is proposed to be recodified as, with modifications, as section 21.

Current subsections (b), (c), and (d) are proposed to be replaced with new subsections (b) and (c). The mandate in current paragraph (b)1, that specific provisions be in other states' rules or laws before the Department will enter into a trading agreement with them, is proposed to be removed; and instead in (c) it is proposed that these provisions be addressed in the terms of any interstate trading agreement entered into by the Department. A proposed new subsection (d) would establish the possibility for verifications of credits generated in other states that are performed under the procedures of the other state's procedures to be recognized, through the terms of an interstate trading agreement, in New Jersey's Open Market Emissions Trading Program.

N.J.A.C. 7:27-30.22 Recordkeeping

Current section 18 is proposed to be recodified as, with modifications, as section 22.

Subsection (a) is proposed to be amended to indicate that generators must maintain amendments, and any Notices of Invalidation, as well as Notices of Generation. Subsection (b) is proposed to be amended to indicate that generators must maintain amendments, and Notices of Transfer as well as records of any cancellation of credits that have been used or of any finding that a credit that has been used is invalid. The requirement, currently in subsection (a), that a generator shall maintain the required records at the facility where the generator source is located is recodified at a new subsection (c), which would clarify that the requirement would apply only if the generator source is a stationary source. A proposed new subsection (e) would require the operator of a registry to maintain records of notifications provided to users pursuant to N.J.A.C. 7:27-30.8(g).

N.J.A.C. 7:27-30.23 Public availability

Current section 19 is proposed to be recodified, with modifications, as section 23. Subsection (b) is amended to clarify that a generator or user has an obligation to make available for inspection all notices and amendments as well as any required supporting documentation.

N.J.A.C. 7:27-30.24 Standards for quantification protocols

Current N.J.A.C. 7:27-30.20 is proposed to be replaced with three new sections N.J.A.C. 7:27-30.24, 25, and 26. New section 24 is a recodification of N.J.A.C. 7:27-30.20(a), (b), and (g), with revisions and new provisions. It would establish the general standards that quantification protocols must meet, including requirements that the protocol used be one that properly applies to the generator or user source; that the protocol conform with EPA guidance; that the calculation methods be sufficiently detailed; that the protocol require that the best available data be used for calculations; and that the protocol require that, for stationary sources, the hierarchies set forth at N.J.A.C. 7:27-30.26 be followed in selecting the emissions quantification techniques to be used. It would also require for any generator or user source (not just for a mobile source) an applicable EPA-approved protocol to be used, if such a protocol is available. Also, for an energy efficiency generation strategy, the section recommends that a generator refer to guidance issued by the New Jersey Board of Public Utilities (BPU). The section also establishes that the Department will provide an opportunity for public comment prior to approving any quantification protocol, and that a generator or user may not use any given protocol unless they have and are willing to provide the information needed to be used in applying the protocol.

N.J.A.C. 7:27-30.25 Contents of quantification protocols

Proposed new section 25 is a recodification of N.J.A.C. 7:27-30.20(c), (d) and (e), with revisions and new provisions. It would list the items that a quantification protocol must include in order to ensure that a quantification protocol would provide comprehensive guidance to a prospective generator or user relevant to quantifying and documenting generation or use of credits. For example, paragraph (a)1 would establish that a protocol must state specifically the emission source or class of emission sources to which the protocol applies (such as, gas-fired electric generating units which have the potential to generate more than 15 megawatts of electricity per year). Other proposed new items that must be included in a protocol would be the formulas to be used in the calculations, the methods to be used to determine if there have been resulting VOC or NO_x emission increases from other

sources on-site or off-site, the methods to be used to determine if there have been resulting increases in emissions of any HAP. The section also lists the supporting documentation that a protocol shall require be provided in a notice, as well the data and records that must be retained by the person who uses the protocol. Finally the section specifies that a protocol shall include example calculations.

N.J.A.C. 7:27-30.26 Hierarchies of quantification techniques

Proposed new section 26 is a recodification of N.J.A.C. 7:27-30.20(f) with revisions and new provisions. It would set forth the criteria to be used, for a protocol for a stationary source, to determine the quantification technique(s) to be used for determining the quantity of actual emission increases or decreases. The section provides options, organized hierarchically, in order to direct the generator or user toward selection of the best available quantification technique. New subsection (b) would restate the hierarchy to be used for VOC or NO_x sources that is currently in N.J.A.C. 7:27-30.20(f). New subsections (c) and (d) would add hierarchies to be used for GHG sources.

N.J.A.C. 7:27-30.27 Interface with other trading programs

A new section 27 is proposed which would establish a one-directional interface between the OMET Program and both the NO_x Budget Program and the Emission Offset Program. Both NO_x Budget Program allowances and credits banked in the Emission Offset Bank could be converted into DER credits.

Credits banked in the Emission Offset Program represent the continuing stream of reductions realized year after year from the on-going implementation of a single emission reduction strategy. The proposed approach to credit conversion takes advantage of the fact that the Emission Offset Program views the credit reduction stream prospectively, which the OMET Program views its retrospectively. Under the proposed conversion methodology, the stream of emission reductions, from the present time into the future would remain in the Emission Offset Bank, while the emission reductions realized from the strategy during the (now past) generation period, would be the basis for generation of DER credits.

The section would also clarify that, once converted, the DER credits would be subject to the geographical constraints on use established for the OMET Program at N.J.A.C. 7:27-30.21, not the constraints of the NO_x Budget Program or the Emission Offset Program.

N.J.A.C. 7:27-30.28 Compliance responsibilities

Current section 21 is proposed to be recodified, with modifications, as section 28.

N.J.A.C. 7:27-30.29 Invalidation and cancellation of DER credits

A new section 29 is proposed which is a recodification of current N.J.A.C. 7:27-30.10(e) and 11(h), with revisions and new provisions. It would set forth the procedures that would apply if the Department or the USEPA finds a credit to be invalid, or if the generator reduces the number of credits in a batch through an amendment of a Notice of Generation. The new section 29 would direct

the registry operator as to how to designate these credits in the registry. For example, if only a portion of the credits in a batch are found to be invalid, the registry operator would be instructed to designate the credits with the higher serial numbers as invalid. It would establish that any generator, holder, or user of a credit who is aggrieved by a finding that the credit is invalid may request an adjudicatory hearing. It also would establish that no credit that is invalid or canceled may be transferred, verified, retired, or used.

N.J.A.C. 7:27-30.30 Penalties

Current section 22 is proposed to be recodified as section 30.

APPENDIX B

Proposed new Appendix B would contain a table setting forth the Global Warming Potentials to be used under this subchapter for converting pounds or tons of a GHG into pounds or tons of carbon equivalent in accordance with the proposed provisions of N.J.A.C. 7:27-30.5.

APPENDIX C

Proposed new Appendix C would set forth excerpts from USEPA's "Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)" guidance document, in order to provide a definition of the term "high priority violation." This term is referenced in the proposed provisions of N.J.A.C. 7:27-30.14(d) and is used in establishing a limit on the use of "permit insurance. "

APPENDIX D

Proposed new Appendix D would contain a table entitled "Emission Coefficients by Fuel or Energy Type." These coefficients may be used under the proposed rule amendments, proposed at N.J.A.C. 7:27- 30.26(c), to quantify emissions of GHG.

APPENDIX E

Proposed new Appendix E would contain a map that would indicate which portions of the State lie within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge. Under this subchapter at N.J.A.C. 7:27-30.19(i), any Notice of Intent to Use for a user source located within 100 kilometers of the Refuge must be submitted to the federal Land Manager 30 days before the use period commences.

N.J.A.C. 7:27-31.6 Interface with the open market emissions trading program

The proposed amendments to N.J.A.C. 7:27-31.6 would set forth the conditions under which a person may convert an allowance under the NOx Budget Program to DER credits. These converted allowances would be transferred to a special retirement account which has not yet been created in the NOx Allowance trading system as of the date of this proposal. By the time these rule

amendments are adopted, the account will have been created, and the account name and account number will have been inserted into the rule at paragraph (a)2 in the adoption document.

N.J.A.C. 7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

Subsection (i) of N.J.A.C. 7:27A-3.10 is proposed to be revised to indicate that the Department will accept only verified DER credits in settlement of a penalty and that the conveyance of such credits shall be in accordance with the procedures for credit use in N.J.A.C. 7:27-30. The revisions would also change the penalty schedule to correspond to the amendments proposed for N.J.A.C. 7:27-30.

Social Impact

Enhancement of the OMET Program, as proposed in these new rules and amendments is socially beneficial.

The OMET program is a market-based approach to air quality regulation, rather than the traditional command-and-control approach. Traditional command-and-control regulation sets a uniform standard for a category of sources, and generally treats all sources within a category subject to the standard in the same way. Sources with high compliance costs generally must achieve the same level of reductions as sources with low compliance costs, unless regulatory flexibility (such as case-by-case modifications or exemptions from emission standards for sources with high compliance costs) is employed to create different standards. If the standards are the same for sources with high and low compliance costs, the result is inefficient because it provides no incentive for sources with low compliance costs to produce additional reductions. If less stringent standards are applied to the sources with high compliance costs, some environmental benefits are foregone.

In contrast, the OMET program capitalizes on this compliance cost differential by allowing sources with higher compliance costs to purchase reductions from the sources with lower compliance costs. This benefit will become increasingly desirable as standards may become tighter and compliance for some may become more difficult.

The net effect is expected to be the same level of overall air quality benefit but for a smaller total cost, or an even greater air quality benefit for the same cost. As a result, the regulatory structure is expected to be more cost-effective and flexible while benefiting the environment.

It is socially beneficial to achieve air quality goals more efficiently, and without unnecessarily imposing burdensome costs on regulated entities. Less efficient regulatory programs translate into lost economic opportunities, job loss, and are a disabling influence on the economy. By enlisting the efficiency of economic forces in the pursuit of environmental protection, the OMET Program benefits the quality of life in New Jersey. This proposal to enhance the OMET program should likewise enhance the realization of these benefits.

Economic Impact

The proposed modifications to the OMET program are expected to have an overall positive economic impact.

The OMET program promotes voluntary emission reductions. The proposed changes will provide additional classes of persons who wish to voluntarily reduce NO_x and VOC emissions the opportunity to become generators of credits, and allow them the possibility of selling their credits and thereby recovering, at least in part, the costs they incurred in reducing the emissions. Also, further reductions of VOC and NO_x are needed in New Jersey to make progress toward attaining the National Ambient Air Quality Standard for ozone; to the extent these reductions can be realized through voluntary reductions under the OMET Program, the DEP will be relieved of the necessity of regulating selected sectors of emission sources, and the owners and operators of these sources will not have to face the cost of complying with new requirements.

The proposed changes would provide a greater number of regulated entities alternative compliance opportunities. Based on their individual business circumstances or needs, a company may elect to comply through use of credits if they find that the flexibility afforded by the trading program is to their advantage or if they find that it is more cost-effective for them to do so. A significant new use will be permit insurance. This use is intended to help New Jersey business and industry respond quickly to the opportunities as they emerge in the global economy. Permittees may, after only seven days' notice to the Department, commence operating with longer hours or at a higher capacity level or with equipment modifications, and compensate for the higher emissions with credits, while their permit applications for their increased production or modified production are still pending. This flexibility should help New Jersey business and industry sustain its productivity and prosper in the emerging competitive environment.

Additionally the proposed changes, by increasing the number of trading transactions, should also create more business opportunities for New Jersey consultants and brokers who are able to provide technical assistance to credit generators, traders, and users. And they should expand the call for the services of New Jersey-licensed Certified Public Accountants and Professional Engineers to perform verifications.

The rule will increase costs, however, for the several additional categories of persons mandated under the rule to be credit users. This include permittees who prove unable to meet a BACT or LAER limit they have committed to achieve; permittees who prove unable to meet a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and which they have committed to achieve; permittees who fail to timely perform required testing of equipment; permittees with emissions that exceed permit limits because their control apparatus is not operating or is dysfunctional; and permittees whose equipment fails to meet required limits during initial testing and trial operation. Rather than being subject only to monetary penalties, these permittees would be mandated to compensate for these failures and shortcomings through use of credits.

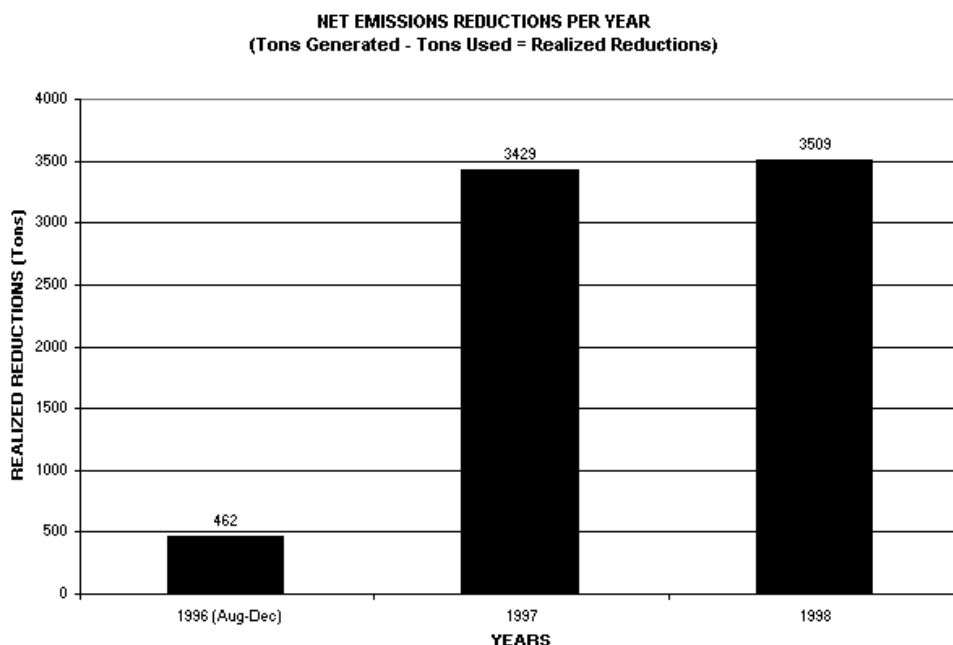
Environmental Impact

Even though the OMET Program is not a regulatory program which mandates emission reductions, the proposed modifications to the OMET program are expected to have an overall positive environmental impact.

NOx and VOCs

The OMET Program promotes voluntary emission reductions by providing incentives for such voluntary actions. Through voluntary actions, it is possible to realize reductions that would not be realized under a conventional command-and-control regulatory scenario. Sources that are too small or too unique often go unregulated. Also, not uncommonly individual sources can attain greater reductions than the Department would require of all sources in the class. Under the OMET Program the owners and operators of these sources can through their individual voluntary actions see that these reductions are realized. By making additional classes of persons eligible to generate credits, the proposed changes should result in more persons volunteering to generate emission reductions.

To date, the number of credits generated each year under the OMET Program has substantially exceeded the number of credits used. From the inception of the OMET Program in August 1996 through April 1999, 49,353 NOx credits were generated during the ozone season (May 1 through September 30) and only 3,357 were used within New Jersey; and 11,688 NOx credits were voluntarily retired. Also 97,675 NOx credits were generated outside the ozone season and only 5,057 were used within New Jersey; and 5,280 NOx credits were voluntarily retired. During this same period 3,730 VOC credits were generated during the ozone season, and within New Jersey only 80 were used; and 183 VOC ozone season credits were voluntarily retired. Also 5,565 VOC credits were generated outside the ozone season, and only 124 of these were used within New Jersey; and 568 of these VOC credits were voluntarily retired. The table below shows the net emission reductions that have been realized each year under the OMET Program since its inception in August, 1996.



The OMET Program also helps to enhance the effectiveness of other rules. By mandating that permittees compensate for certain failures and shortcomings through credit use, the proposed rule changes would ensure that the environment “sees” emission reductions, in spite of the failures or shortcomings. Such mandates are proposed to apply to permittees who prove unable to meet a BACT or LAER limit they have committed to achieve; permittees who prove unable to meet a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and which they have committed to achieve; permittees who fail to timely perform required testing of equipment; permittees with emissions that exceed permit limits because their control apparatus is not operating or is dysfunctional; and permittees whose equipment fails to meet required limits during initial testing and trial operation.

The proposed amendments would support a higher degree of regulatory compliance. When an owner or operator must choose between fulfilling a contract on the schedule a client wants and waiting the weeks or months needed for a new permit before commencing to meet the client’s needs, there is an incentive for non-compliance. By offering the alternative of “permit insurance” these proposed amendments would provide a mechanism for the owner or operator to both meet his environmental obligations and with only seven days delay (or, only 30 days delay, if the user source is within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge) commence to produce the products the client needs.

A common concern in respect to emissions trading is the effect on local air quality in the vicinity of a facility where credits are used. The OMET Program includes a number of safeguards to ensure against the occurrence of local adverse impacts. First of all, the amount of increase allowed is limited. Except for permit insurance uses, users may not use DER credits to exceed a permit limit;

and for permit insurance uses, the amount of the increases allowed at a facility is “capped” at 5 tons of VOC per year or 10 tons of NO_x per year, for all credit uses combined. For credit generation as well as credit use, the generation or use is prohibited if it would entail an increase, greater than de minimis, in emissions of any hazardous air pollutant (HAP); and if there is any increase at all, however small, in any HAP emission, this must be disclosed in the notice, which is a publically available document. These proposed amendments would enhance the safeguards of the OMET Program by making clear, for both credit generation and use, that the generation or use is prohibited if it may result in an increase in emissions of any HAP, however slight, if the increase would result in an increase in the source’s potential to emit any HAP above the emission threshold listed in Subchapter 8 and would thereby trigger the requirement under the permitting rules for a demonstration that the control of the source’s emissions meets state-of-the-art standards.

Further, all activities under the OMET Program remain subject to the “prohibition of air pollution” at N.J.A.C. 7:27-5; this rule prohibits any person from allowing air emissions in a quantity or duration as “are, or tend to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property....”

The OMET rule requires that, whenever DER credits are used, 10 percent of the total amount of credits used must be retired for the benefit of the environment. For example, if a user is compensating for 900 pounds of emissions increases, at least 10 DER credits (having an emissions value of 1000 pounds) would be required for the use. By promoting more usage of credits, these amendments would also promote increased permanent retirement of this “10 percent.” Additionally, for permit insurance uses, these amendments would require that the amount retired for the permit of the environment be 20 percent, twice the usual amount. This retirement at the “20 percent” level was recommended by the Blue Ribbon Panel. A number of constraints and safeguards are included in this proposal to assure that permit insurance uses will not pose new, unacceptable risks to public health and the environment. However, Panel members recognized that allowing emissions to exceed a permit limit could have the appearance of increasing risk and, therefore, in recommending permit insurance to the Department also recommended the doubling (to 20%) the number of credits retired with each use and thereby increasing the benefit to the environment.

The OMET Program also creates the opportunity for voluntary retirement of credits. The proposed amendments enhance this opportunity by creating a new section dedicated solely to voluntary retirement which clearly sets forth the simple procedures to be followed. The Department encourages the voluntary retirement of DER credits. Voluntary retirement of VOC or NO_x credits helps lower “smog” levels in the State and contributes the State’s meeting its obligation, under the SIP, to make progress toward attaining the NAAQs for ozone. Voluntary retirement of GHG credits contributes to forestalling global warming and helps prevent sea level rise.

GHGs

The proposed new rules and amendments would create the first State emissions bank for reductions of GHG emissions. GHG emissions have heat trapping properties, and scientific studies have shown that increased concentrations of GHGs in the atmosphere can, and most probably are, leading to global warming. Global warming, in turn, is believed to result in climate change and to

cause sea level rise. To the extent that the creation of a GHG emissions bank can serve as an incentive for persons to voluntarily reduce their GHG emissions, and “bank” these emission reductions, the GHG credit generation and banking provisions, proposed herein, is a significant initial step in addressing global warming.

Ozone season

Shortening the ozone season of Subchapter 18 (Emission Offset Rule) to be consistent with the ozone season (May 1 thru September 30) of the OMET Program is expected to be beneficial for ozone control because emission reductions in April and November (part of the non-ozone season) would no longer be used to increase emissions during May through September (the ozone season).

Jobs Impact

As discussed above in the Economic Impact Statement, the proposed amendments and new rules will have a primarily positive economic impact and should support the maintenance and creation of jobs in New Jersey. By reducing the cost of complying with air pollution control requirements and by providing companies that voluntarily reduce emissions the opportunity to recover, at least in part, their emissions control costs, companies should be able to save money which they can then reinvest. While each company will use its cost savings in accordance with its own specific goals and priorities, the net effect should be the sustaining and expansion of economic activity, which in turn should result in some degree of job preservation and creation.

Comparison with Federal Law

On April 7, 1994 the USEPA published Economic Incentive Program (EIP) rules in the Federal Register at 59 FR 16690 and subsequently codified these rules at 40 CFR Part 51, Subpart U. These rules apply to economic incentive programs, such as the OMET Program, which a State elects to adopt. The current OMET Program and the new rules and amendments proposed herein are consistent with the federal EIP rules.

Agriculture Industry Impact

Pursuant to P.L. 1998, c. 48, adopted on July 2, 1998, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments’ impact on the agriculture industry. The proposed amendments, regarding the open market emissions trading system, will have no impact upon the agriculture industry.

Regulatory Flexibility Statement

The Department has taken measures to optimize the benefits and minimize the burdens of the OMET Program on small businesses. In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and the rules at N.J.A.C. 1:30-3.1(f)4, the Department has determined that the proposed amendments would impose some additional reporting, recordkeeping, or other compliance requirements on small businesses (as defined in the Regulatory Flexibility Act) that participate in the OMET Program. The Department believes that the proposed recordkeeping and reporting requirements, that apply to small businesses as well as large businesses, are necessary to assure that the OMET program provides the appropriate balance between giving businesses flexibility with meeting regulatory requirements and protection of the environment. Lesser requirements for small businesses might jeopardize this balance.

Generation, transfer, and retirement of DER credits is always voluntary. In most cases use of DER credits is also voluntary. It is anticipated that most small businesses will not be interested in participating in the OMET Program; if a small business does have interest in voluntarily participating but finds that the requirements are too burdensome or that the costs of participating in the OMET program are prohibitive, the small business may simply choose not to participate. The amendments proposed herein would, however, make participation mandatory in a limited number of circumstances: if the small business proved unable to meet a BACT or LAER limit it committed to achieve; if it proved unable to meet a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and which it committed to achieve; if it failed to timely perform required testing of equipment; if it had emissions that exceeded permit limits because its control apparatus was not operating or was dysfunctional; or if its equipment fails to meet required limits during initial testing and trial operation. For these failings or shortcomings compensation with credits would be required, in order to ensure that air quality obligations are met.

The proposed compliance requirements apply to all persons participating in the OMET Program, whether or not they are small businesses. If a small business does voluntarily choose to participate in the OMET program, or if it is required by the rule to do so, these rules will impose the following additional compliance requirements:

Recordkeeping. The current OMET Program requires that all generators (including any small business that is a generator) to retain a copy of each Notice of Generation, and that all users (including any small business that is a user) to retain a copy of each Notice of Intent to Use and each Notice of Use. The proposed amendments would add the requirement that a generator also retain two additional types of documents: amendments to a Notice of Generation; and Notices of Invalidation pertaining to a credit included in a Notice of Generation. The proposed amendments would also add the requirement that a user also retain three additional types of documents: Notices of Transfer pertaining to any credit used; amendments to any Notice of Generation, Notice of Transfer, Notice of Verification, Notice of Intent to Use, or Notice of Use; and any notice that a credit that was used was subsequently found invalid or cancelled.

The operator of the registry is, presently, a small business. The proposed amendments would require the operator of the registry to retain records of any notifications that the operator of the registry provided to users, notifying the user that a credit that the user used was cancelled or that the credit's designation as "verified" has been removed.

Reporting. The proposed amendments primarily clarify current reporting requirements, rather than adding new requirements. This includes clarification that a notice must be complete when submitted. One additional proposed requirement, however, is that all Notices of Generation, Notices of Intent to Use, and Notices of Use must be submitted electronically.

Also, certain new requirements would apply in special cases. For example, if the generator is an agent generating credits on behalf of multiple parties, the generator would be required in the Notice of Generation to include a copy of the multi-party agreement that authorized the agent to act on behalf of the various parties. Or if a use is a "permit insurance" use, the user would be required also to submit the Notice of Intent to Use as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.20 or 22.22, and would be required to submit two additional demonstrations as part of the Notice of Use.

Also, the proposed amendments would require additional information be submitted in all Notices of Generation including a demonstration that the person submitting the notice is authorized to be the generator and a demonstration that the emission reductions are surplus including that the reductions are not the result of regional highway or transit projects. Also, the proposed amendments would require additional information be submitted in all Notices of Intent to Use including an explanation why the user intends to use credits and including information pertaining to the number of credits needed. Also, the proposed amendments would require additional information be submitted in all Notices of Use including a demonstration that the required number of credits were held by the day they were required to be held. Also, the proposed amendments would require additional information be submitted in all quantification protocols including sample calculations. The Department believes these requirements are necessary to assure the integrity of the OMET program.

The proposed amendments would broaden the OMET Program, making it feasible for more persons, including more small businesses, to participate. New OMET Program participants, in particular, may find the program's documentation requirements demanding, and may find participation time-intensive. Participants would need to devote their staff resources to the tasks required for participation and compliance, and/or they may find that they wish to rely on the services of brokers, consultants, or lawyers to help them meet program requirements. As circumstances will vary, the costs entailed in participating in the OMET Program can only be approximated. For example, if a small business was interested in using DER credits for compliance, the required resources might include the following: 1 to 5 days of consultant or staff time; broker's fees for locating and providing credits; the cost of the credits (at possibly \$40 to \$150 per credit); possibly verifier's fees for verification of credits; and registry fees for submission of the Notice of Intent to Use and the Notice of Use (less than \$50). No person is expected to voluntarily participate in the OMET Program unless it is to their advantage to do so. Therefore it can be assumed that the value they gain (in convenience or in lowering compliance costs) is greater than their costs of participation.

For the few persons required to participate, the costs of participation would be new or additional costs. However, as indicated above, only persons who have failed to meet their prior commitments, their compliance requirements, or their obligation to document their compliance are mandated to use DER credits. Therefore, the Department believes that the proposed amendments and new rules are consistent with minimizing the impact on small businesses, to the extent allowed by federal and State law, without compromising the Department's obligation to protect public health, safety and welfare.

Full text of the proposed amendments and new rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

7:27-1.32 Request for an adjudicatory hearing

(a) [An applicant who believes himself or herself to be] Any person who is aggrieved with respect to any [decision made by the Department regarding any preconstruction permit and certificate, amendment, certificate renewal, variance, or registration,] of the following may [contest the decision and] request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1[, if the Department], as follows:

1. Denies an application, or any part thereof;
 2. Has, in the judgment of the applicant, imposed an unreasonable condition on its approval of an application;
 3. Revokes or withdraws a previously issued approval; or
 4. Denies the request for a stay under N.J.A.C. 7:27-1.33.]
1. If the person is an applicant, registrant, or permittee, and is aggrieved with respect to a decision made by the Department to:
 - i. Deny an application, or any part thereof, for a permit or certificate, for a modification or revision thereof, or for a renewal or a variance; or not accept a registration;
 - ii. Impose any condition on its approval which the applicant, registrant, or permittee finds objectionable;
 - iii. Revoke or withdraw a previously issued approval; or
 - iv. Deny the request for a stay under N.J.A.C. 7:27-8.13; or
 2. If the person is the generator or holder of a discrete emission reduction (DER) credit generated pursuant to N.J.A.C. 7:27-30, and is aggrieved with respect to a finding made by the Department that the credit is invalid.

(b) - (e) [No change.]

7:27-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Greenhouse gas” or “GHG” means any of the following gases: carbon dioxide (CO₂)[,]; methane (CH₄)[,]; nitrous oxide (N₂O)[,]; [any hydrofluorocarbon (HFC),] certain hydrofluorocarbons (HFC23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310me); certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulphur hexafluoride (SF₆).

...

“Potential to emit” means the same as that term is defined by the EPA at 40 CFR 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is [Federally] federally enforceable. Unless otherwise indicated, source-related fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include consideration of the holding of any [banked emission reductions that are held] of the following by the owner or operator: emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8, DER credits generated pursuant to N.J.A.C. 7:27-30.4, or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7.

...

7:27-8.3 General provisions

(a) - (j) (No change.)

(k) No approval by the Department of a change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and [30.13(c)] 30.14(g), the permit must specifically allow such use.

(l) In accordance with N.J.A.C. 7:27-30.14(a)6 and 7, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing of the VOC and/or NO_x emissions of equipment or control apparatus; and

2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.

(m) - (n) (No change.)

- (o) Notwithstanding (c) above, a permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3 and 5, (b), (c)6 and (d);
2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-8.20;
3. If the use is a "permit insurance" use, the permittee conforms with the conditions for "permit insurance" uses set forth at N.J.A.C. 7:27-30.14(d); and
4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30.

7:27-8.4 Applications

(a) - (q) (No change.)

- [(r) If an application , registration or notice includes a voluntary pollution prevention measure(s) or voluntary air pollution control measure(s) not otherwise required, the applicant may request that the permit authorize use of the emission reductions resulting from the measure(s) as a basis for generating discrete emission reduction (DER) credits under N.J.A.C. 7:27-30.]

- (r) If a permit includes a BACT or LAER limit or a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and if the permittee submits an application for a permit revision which would replace the limit with a less stringent limit, the Department shall approve the proposed new limit only if:

1. The equipment and/or control apparatus is not able to operate in compliance with the originally established permit limit;
2. The permittee has taken all actions technically feasible to reduce the emissions from the equipment and/or control apparatus in an effort to comply with the original permit limit, and the Department agrees that there are no reasonably available means by which it would be feasible to further reduce the emissions;

3. The proposed higher permit limit will not result in emissions that may cause any of the following:
 - i. A violation of any State or federal ambient air quality standard;
 - ii. Any exceedance of a PSD increment as defined in 40 CFR Part 52;
 - iii. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or
 - iv. A contravention of any other criterion, the purpose of which is to protect human health and welfare and the environment, established by the Department by rule or in a permit, operating certificate, or order applicable to the permittee, issued pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;
 4. The permittee shall compensate in full, in accordance with N.J.A.C. 7:27-30.14(a)5, for the increase in allowable emissions of the equipment and/or control apparatus, and such compensation shall continue for the shorter of the following:
 - i. The life of the equipment and/or control apparatus; or
 - ii. Until the permit is again revised, and a new permit limit which does not exceed the originally established limit is approved; and
 5. The requirement to compensate in full through use of credits, set forth in (r)4 above, shall be included as a condition of the revised permit.
- (s) If the applicant intends to use DER credits to fulfill emission offset requirements under N.J.A.C. 7:27-18, the applicant shall indicate this in the permit application in accordance with N.J.A.C. [7:27-30.13(c)] 7:27-30.14(g).
- (t) (No change.)

7:27-8.17 Changes to existing permits and certificates

- (a) - (d) (No change.)
- (e) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and [7:27-30.13(c)] 7:27-30.14(g), the permit must specifically allow such use. If the permit does not allow such use, a permit revision under N.J.A.C. 7:27-8.18 is required.

7:27-8.20 Seven-day-notice changes

- (a) (No change.)
- (b) A seven-day-notice may be used for [any] the following:
 - 1. A change made to a permitted source which meets all three of the following requirements:
 - [1.] i. The action is a physical or operational change that is outside the scope of activities allowed by the permit;
 - [2.] ii. The action has the potential to result in an increase in actual emissions, but will not increase emissions over the allowable limits in the permit and certificate; and
 - [3.] iii. The action will not alter stack parameters or characteristics so as to cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access;
 - 2. Notice indicating that an applicant plans to act at risk under the authority of N.J.A.C. 7:27-8.24 or 8.25; or
 - 3. Notice of an increase in the actual emissions of an air contaminant included in the permit, including an increase due to compliance using DER credits under N.J.A.C. 7:27-30, such as for “permit insurance” pursuant to N.J.A.C. 7:27-30.14(d).
- (c) (No change.)
- (d) A permittee shall not under (b)1 above use a seven-day-notice for a change which shall:
 - 1. - 2. (No change.)
- (e) The Department shall separately evaluate each change [separately] submitted under (b)1 above to determine its effect on actual emissions. If a change, evaluated alone, would cause an increase in actual emissions (but not to a level over permit allowables), it shall be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions (but not to a level over permit allowables), and one reducing emissions by the same amount, the change which increases emissions shall be processed through a seven-day-notice. Similarly, the Department shall separately evaluate each change [separately] submitted under (b)1 above to determine its effect on allowable

emissions. If a change, evaluated alone, would cause a permit limit to be exceeded, it may not be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions over a permit limit, and one reducing emissions by the same amount, the change which increases emissions may not be processed through a seven-day-notice. Instead, the change shall be submitted as a permit revision under N.J.A.C. 7:27-8.18.

(f) - (h) (No change.)

[(i) The procedures in this section shall also be used for submittal of a notice indicating that an applicant plans to act at risk under the authority of N.J.A.C. 7:27-8.24 or 8.25.]

7:27-8.28 Delay of testing

(a) A permittee who seeks the approval of the Department for a delay in testing required pursuant to N.J.A.C. 7:27-8.4(f), 8.7(f), or 8.13(d) shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27-8.4(b).

(b) In a request for a delay of testing, submitted pursuant to (a) above, a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).

(c) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)6, pursuant to which the permittee may be required to provide compensation through use of DER credits.

7:27-16.5 Marine tank vessel loading and ballasting operations

(a) (No change.)

(b) The owner or operator of any marine terminal having an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline as cargo into marine tank vessels or having a daily throughput, between May 1 and September [15] 30, of 60,000 gallons or greater for loading gasoline as cargo into marine tank vessels shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from gasoline transfers at the facility by no less than 95 percent by weight.

(c) - (k) (No change.)

7:27-16.17 Facility-specific VOC control requirements

(a) - (l) (No change.)

(m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any application for an alternative VOC control plan [issued, extended or renewed under] submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative VOC control plan and under the emission limit which would otherwise apply under this subchapter.

(n) - (t) (No change.)

7:27-18.5 Standards for use of emission reductions as emission offsets

(a) - (g) (No change.)

(h) Reductions in emissions of VOC or NO_x between [November]October 1 and [March 31] April 30 inclusive, may not be used to offset increased emissions of VOC or NO_x emitted between [April]May 1 and [October 31] September 30 inclusive.

(i) - (k) (No change.)

7:27-18.11 [Procedures for interstate and intrastate] Interface with other trading programs

(a) The Open Market Emissions Trading Program at N.J.A.C. 7:27-30 establishes the rules for the generation, trading, use, and voluntary retirement of DER credits. Emission reductions banked pursuant to N.J.A.C. 7:27-18.8 may be converted to DER credits under the following conditions:

1. The person converting the emission reductions is their holder of record in the New Jersey emission offset bank;
2. The change which caused the emission reductions to commence was first implemented after May 1, 1995;
3. The person who applied for the banking of the emission reductions under N.J.A.C. 7:27-18.8 would be eligible under N.J.A.C. 7:27-30.4(a) to be the generator of DER credits based on those emission reductions;
4. The emission reductions are eligible under N.J.A.C. 7:27-30 to be the basis for a DER credit. (Emission reductions that result from a shutdown or curtailment, for example, may not be used as the basis of a DER credit);

5. The last day of the generation period is no earlier than 90 days before the date of submission of the Notice of Generation (the provisions for late submittal at N.J.A.C. 7:27-30.7(b) shall not apply; for example, to convert emission reductions realized during a generation period that ends on January 1, 1999, a complete Notice of Generation must be submitted by April 1, 1999);
 6. The holder of the emission reductions submits to the Department's emission offset bank and the registry a Notice of Generation which meets the requirements of N.J.A.C. 7:27-30.7;
 7. Any applicable discount under N.J.A.C. 7:27-18.8(e) shall be applied prior to converting the emission reductions to DER credits; and
 8. The number of DER credits generated is calculated in accordance with N.J.A.C. 7:27-30.5 and the following:
 - i. In determining the lowest allowable emission rate which applies in accordance with N.J.A.C. 7:27-30.7(d)1i, a limit established in a permit shall not be taken into account, unless it is required by an underlying federal or State rule, including (if applicable) the requirement at N.J.A.C. 7:27-8.12 to document state of the art or the requirement at N.J.A.C. 7:27-22.35 to incorporate advances in the art of air pollution control; and
 - ii. The historic baseline rate used in the calculation shall be determined in accordance with N.J.A.C. 7:27-30.7(d)3; except that the five years prior to the banking of the reductions as emission offsets (rather than the five years prior to the generation period) may be used as the basis for deriving the historic baseline rate if:
 - (1) The emission reductions were banked for future application as emission offsets pursuant to N.J.A.C. 7:27-18.8 prior to [the date which is the operative date of these amendments]; and
 - (2) The Notice of Generation for the first generation period is submitted no later than [the date which is one year plus 90 days after the operative date of these amendments].
- (b) The provisions at N.J.A.C. 7:27-18.8(e), which require that the amount of emission reductions be reduced to reflect any new emission limits applicable to the generator source that are established under a State or federal statute, rule, or regulation, shall be applied to emission reductions which were banked pursuant to N.J.A.C. 7:27-18.8 and which are being converted to DER credits.

7:27-19.2 Purpose, Scope and Applicability

- (a) - (e) (No change.)
- (f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The procedure for obtaining the Department's approval of such an exemption is set forth in N.J.A.C. 7:27-19.14. The Department shall approve the exemption only if the facility satisfies the requirements of (f)1 and 2 below:
1. (No change.)
 2. The facility's potential to emit NO_x on any calendar day from May 1 to September [15] 30 is less than 137 pounds per day.

7:27-19.6 Emissions Averaging

- (a) (No change.)
- (b) An owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written application to the Department in accordance with N.J.A.C. 7:27-19.14(a), (b) and (c). The owner or operator shall include the following information in the application:
1. - 5. (No change.)
 6. A demonstration that in operating at the peak daily heat input rate of all the averaging units together or of the designated set would satisfy the following equation:

$$TPEE \leq TPAE$$

where:

- i. (No change.)
- ii. TPAE means total peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit or the peak allowable emissions of the designated set. The peak allowable emissions for each averaging unit equals the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. The TPAE of the designated set means the applicable NO_x

emission limit for each averaging unit multiplied by the heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the applicable NO_x emission limit from May 1 through September [15] 30 is the limit established under N.J.A.C. 7:27-19.20(d) or 19.20(g)3 as applicable, and the applicable NO_x emission limit from [September 16] October 1 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4;

7. - 9. (No change.)

(c) (No change.)

(d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. (No change.)

2. The sum of the actual NO_x emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable NO_x emissions for all averaging units in the designated set. The allowable NO_x emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable NO}_x \text{ emissions} = H \times AL$$

where:

i. (No change.)

ii. AL means the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, expressed in pounds of NO_x per million BTUs. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the applicable NO_x emission limit from May 1 through September [15] 30 is the limit established under N.J.A.C. 7:27-19.20(g)3, and the applicable NO_x emission limit from [September 16] October 1 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4.

(e) (No change.)

(f) The owner or operator shall demonstrate compliance with this section as follows:

1. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for each calendar day during the

period beginning May 1 and ending September [15] 30 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation; and

2. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for the 30-day period ending on [September 16] October 1 of each year, and the 30-day period ending on each subsequent day through April 30 of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire 30-day period. The owner or operator shall perform the calculations and make a record of them by the 15th day of each month, for all 30-day periods ending in the preceding month.

(g) (No change.)

- (h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (l) below. The owner or operator shall include the following information in the quarterly report:

1. - 3. (No change.)

4. In the report for the quarter ending September 30[:

- i. The compliance determination required under (f)2 above for each 30 day period ending on a calendar day from September 16 through September 30, inclusive; and
- ii. The], the compliance determination required under (f)1 above for each calendar day from July 1 through September [15] 30; and

5. (No change.)

(i) - (j) (No change.)

7:27-19.13 Facility-Specific NO_x Emissions Limits

(a) - (h) (No change.)

- (i) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any of the equipment or source operations at the subject facility listed pursuant to (b)1 or (c)1 above necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any application for an alternative maximum allowable NO_x emission rate [issued, extended or renewed under] submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative maximum allowable NO_x emission rate and under the emission limit which would otherwise apply under this subchapter.

(j) - (p) (No change.)

7:27-19.19 Recordkeeping and recording

(a) - (c) (No change.)

- (d) For each combustion source listed in (c) above, the owner or operator shall record the following information for each day from May 1 through September [15] 30, for the 30-day period ending on [September 16] October 1, and for each 30-day period ending on each subsequent day through April 30 of the following year:

1. - 2. (No change.)

3. The amount, type and higher heating value of each fuel consumed during each day from May 1 through September [15] 30, during the 30-day period ending on [September 16] October 1, and during each 30-day period ending on each subsequent day through April 30 of the following year;

4. - 6. (No change.)

(e) - (g) (No change.)

7:27-19.20 Fuel Switching

(a) - (f) (No change.)

- (g) Beginning in calendar year 1995, the owner or operator shall operate each combustion source included in the plan in compliance with the following:

1. (No change.)

2. From May 1 through September [15] 30 of each year, the combustion source shall combust the cleaner fuel exclusively, or derive a higher percentage of its total heat input from cleaner fuel than the percentage it derived from May 1 through September [15] 30 of the base year;
 3. During each calendar day from May 1 through September [15] 30 of each year, the combustion source shall emit NO_x at an average rate no higher than the maximum allowable NO_x emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, the maximum allowable NO_x emission rate shall be 1.0 lb/MMBTU;
 4. - 5. (No change.)
- (h) (No change.)
- (i) The owner or operator shall demonstrate compliance with this section as follows:
1. Each calendar day from May 1 through September [15] 30 of each year, the owner or operator shall determine whether each combustion source included in the plan is in compliance with the applicable daily NO_x emission limit under (g)3 above. The owner or operator shall perform the calculations necessary to verify compliance and make a record of them within three working days after the date that is the subject of the calculation;
 2. For the 30-day period ending on [September 16] October 1, and for each 30-day period ending on each subsequent day until April 30 of the following year, the owner and operator shall determine whether each combustion source included in the plan is in compliance with the applicable 30-day NO_x emission limit under (g)4 above; and
 3. (No change.)
- (j) - (l) (No change.)

7:27-19.21 Phased compliance - repowering

- (a) - (f) (No change.)
- (g) A repowering plan (and agreement to repower) approved under this section is not required to be submitted to EPA as a proposed revision to New Jersey's State Implementation Plan, if the plan provides that NO_x emissions from each combustion source included in the plan will be controlled during the interim period through one of the following methods:
1. (No change.)

2. The use of selective non-catalytic reduction from May 1 through September [15] 30 of each year.

(h) (No change.)

7:27-19.23 Phased compliance - use of innovative control technology

(a) - (d) (No change.)

- (e) An owner or operator who has obtained the Department's approval of an innovative control technology plan shall:

1. - 9. (No change.)

10. Compensate, through use of DER credits in accordance with N.J.A.C. 7:27-30, for the amount (if any) by which the source's actual NO_x emissions after the date on which the innovative control technology is required to be implemented (as stated in (c)5v above) exceed the emissions which would have resulted if the source had attained the rate of NO_x emissions stated in (c)3 above.

(f) - (h) (No change.)

7:27-19.24 MEG alerts

(a) - (b) (No change.)

- (c) The electric generating utility shall use [NO_x discrete emission reductions (DERs)] DER credits in accordance with N.J.A.C. 7:27-30 to compensate for the excess NO_x emissions during the MEG alert. The ratio of the amount of [the] NO_x [DERs] emission increases required to be compensated for with credits to the amount of the excess NO_x emissions calculated under (b)6 above shall be 1.3:1.

7:27-19.25 Exemption for emergency use of fuel oil

(a) (No change.)

- (b) The exemption under (a) above is available only for a combustion source that uses natural gas as its primary fuel, or is seasonally combusting natural gas pursuant to a plan approved under N.J.A.C. 7:27-19.14 and 19.20. For a combustion source that uses natural gas as its primary fuel, the exemption under (a) above is available at any time during the year. For a combustion source that is seasonally combusting natural gas, the exemption under (a) above is available

only from May 1 through September [15] 30. This exemption is also available for those combustion sources which combust refinery gas as a primary fuel.

(c) - (d) (No change.)

7:27-22.3 General provisions

(a) - (ss) (No change.)

(tt) Notwithstanding (qq) above, a permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3 and 5, (b), (c)6 and (d);
2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-22.22;
3. If the use is a “permit insurance” use, the permittee conforms with the conditions for “permit insurance” uses set forth at N.J.A.C. 7:27-30.14(d); and
4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30.

(uu) If a permit includes a BACT or LAER limit or a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and if the permittee submits an application for a permit modification which would replace the limit with a less stringent limit, the Department shall approve the proposed new limit only if:

1. The equipment and/or control apparatus is not able to operate in compliance with the originally established permit limit;
2. The permittee has taken all actions technically feasible to reduce the emissions from the equipment and/or control apparatus in an effort to comply with the original permit limit, and the Department agrees that there are no reasonably available means by which it would be feasible to further reduce the emissions;
3. The proposed higher permit limit will not result in emissions that may cause any of the following:
 - i. A violation of any State or federal ambient air quality standard;
 - ii. Any exceedance of a PSD increment as defined in 40 CFR Part 52;

- iii. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or
- iv. A contravention of any other criterion, the purpose of which is to protect human health and welfare and the environment, established by the Department by rule or in a permit, operating certificate, or order applicable to the permittee, issued pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;
- 4. The permittee shall compensate in full, in accordance with N.J.A.C. 7:27-30.14(a)5, for the increase in allowable emissions of the equipment and/or control apparatus, and such compensation shall continue for the shorter of the following:
 - i. The life of the equipment and/or control apparatus; or
 - ii. Until the permit is again revised, and a new permit limit which does not exceed the originally established limit is approved; and
- 5. The requirement to compensate in full through use of credits shall be included as a condition of the revised permit.
- (vv) In accordance with N.J.A.C. 7:27-30.14(a)6 and 7, a permittee shall compensate for the following through use of DER credits:
 - 1. Failure to perform timely testing of the VOC and/or NO_x emissions of equipment or control apparatus; and
 - 2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.
- [(tt)](ww) (No change in text.)

7:27-22.18 Source emissions testing and monitoring

- (a) - (j) (No change.)
- (k) A permittee who seeks the approval of the Department for a delay in testing required pursuant to a permit and/or this section shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27-22.3(t) and to the appropriate regional enforcement office indicated in paragraphs 1 through 4 below.
 - 1. If the permitted source is located in Mercer, Middlesex, Monmouth, Ocean, or Union County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Compliance & Enforcement
Horizon Center, P.O. Box 407
Robbinsville, NJ 08625-0407

2. If the permitted source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection
Metropolitan Regional Office
Air and Environmental Quality Compliance & Enforcement
2 Babcock Place
West Orange, NJ 07052-5504

3. If the permitted source is located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Compliance & Enforcement
1259 Route 46 East, Building 2
Parsippany-Troy Hills, NJ [07054] 07054-4191

4. If the permitted source is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08102

5. A request for a delay in testing shall include the following information at a minimum:

- i. Justification why the delay in testing is necessary:
- ii. A proposed test date or a proposed set of conditions that would define a future test date, and:
- iii. Certification signed by the responsible party at the facility and in accordance with the certification procedures at N.J.A.C. 7:27-1.39.

6. The Department will approve the request for a delay in testing if one of the following criteria is met:

- i. The test was delayed due to a Departmental delay, such as if the protocol is still under review/negotiation only if the protocol was submitted in a timely fashion;
 - ii. The equipment which is to be tested had not been installed; or
 - iii. The equipment is not in operation or is not operating at its maximum permitted level. In the latter case, the test might be required after an initial extension regardless of production rate with additional testing required once the maximum permitted level is achieved. This determination will be made by the appropriate regional enforcement office.
- (l) In a request for a delay of testing, submitted pursuant to (k) above, a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).
- (m) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)6, pursuant to which the permittee may be required to provide compensation through use of DER credits.

7:27-22.22 Seven-day-notice changes

- (a) - (b) (No change.)
- (c) Except as provided at (b) above, any of the following changes may be made as seven-day-notice changes, pursuant to the procedures of this section:
- 1. - 3. (No change.)
 - [4. Use of DERs for compliance pursuant to the Open Market Emission Trading Rule at N.J.A.C. 7:27-30;]
 - [5.]4. (No change in text.)
 - [6.]5. (No change in text.)
- (d) In addition to the items listed at (c) above, [any] a seven-day-notice change may be used for the following, pursuant to the procedures of this section:
- 1. A change to an existing significant source operation, or construction or installation of any new significant source operation, at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1, [may be made as a seven-day-notice change, pursuant to the procedures of this section,] provided that:

[1.]i. (No change in text.)

[2.]ii. The proposed change, construction, or installation is either:

[i.](1) (No change in text.)

[ii.](2) (No change in text.)

[3.]iii. The proposed change, construction, or installation does not cause any of the following:

[i.](1) (No change in text.)

[ii.](2) (No change in text.)

[iii.](3) (No change in text.)

[iv.](4) The addition of a new production process; or

2. Notice of an increase in the actual emissions of an air contaminant included in the permit, including an increase compensated for through use of DER credits under N.J.A.C. 7:27-30, such as for “permit insurance” pursuant to N.J.A.C. 7:27-30.14(d).

(e) - (g) (No change.)

(h) To be administratively complete, any notice submitted pursuant to [(d)] (d)1 above for a modification of equipment or control apparatus, or installation of new equipment or control apparatus, at a facility with an approved facility-wide permit, shall include a Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K-3 and 4 in addition to the items required in (g) above.

(i) To be administratively complete, a notice submitted[for the trading of DERs] pursuant to (d)2 above for compliance with a permit limit through use of DER credits, under the “permit insurance” provisions of the Open Market Emission Trading Rules at N.J.A.C. 7:27-30, [as authorized pursuant to (c)4 above,] shall be a copy of the Notice of Intent to Use [DERs, completed] submitted for the use in accordance with N.J.A.C. 7:27-[30.14] 30.15 and 19. [The Notice of Intent to Use DERs which satisfies the requirements at N.J.A.C. 7:27-30.]

(j) - (n) (No change.)

7:27-30.1 Purpose and scope

- (a) This subchapter establishes procedures and standards for [persons who generate discrete emission reductions (DERs) and persons who use DERs to comply with certain air pollution control requirements]the Open Market Emissions Trading Program.
- (b) This subchapter includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x). It also includes procedures and standards for compliance with certain VOC and NO_x air pollution control requirements through the use of DER credits.
- (c) This subchapter also includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of greenhouse gases (GHG).
- [(b)](d) Nothing in this subchapter affects the applicability of the requirements of any other law, regulation, order or permit. For example, if N.J.A.C. 7:27-8 or 22 would require that a permit be revised or modified to reflect a physical or operational change that results in an emission increase, that permit revision or modification would still be required regardless of whether the change arose from the generation or use of [DERs] DER credits.

7:27-30.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[“Activity” means an emission source's activity during a selected period of time, expressed in units that correlate directly with the source's emission rate. For example, if a source's emission rate is expressed as pounds of VOC per hour, activity would be expressed in hours; if a source's emission rate is expressed as pounds of NO_x per million BTU, activity would be expressed in millions of BTU.]

“Activity” or “activity level” means, in reference to an emissions source, the duration or degree of its operation during a selected period of time, expressed in units that correspond to the units used in the denominator of an emission rate which applies to the source. For example:

1. If the emission rate is expressed as emissions per hour of operation, the source’s activity would be expressed as the number of hours of operation in the selected period of time; or
2. If the emission rate is expressed as emissions per BTU of fuel consumed, the source’s activity would be expressed as the number of BTU’s of fuel consumed during the selected period of time.

...

["Air quality control region" means a geographic area designated by the EPA under 42 U.S.C. §7407(b) or (c), or any contiguous area which has not been so designated.]

...

"AP-42" means the manual, published by the EPA, entitled "Compilation of Air Pollutant Emission Factors", which is incorporated herein by reference, as amended and supplemented. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, 22161, (703) 487-4650; or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3228. In addition, this document can be downloaded electronically from the EPA's Technology Transfer Network Bulletin Board Service by dialing (919) 541-5742; or from the EPA website at <http://epa.gov/tnn/chief/ap42etc.html>.

...

"Area source" means a class of stationary [source] sources or nonroad sources, where each source in the class is too small and/or too numerous to be individually listed in an emissions inventory submitted by the State to the EPA [which:

1. Is not located at a facility subject to the] or in a facility's emission statement [requirements of] submitted pursuant to N.J.A.C. 7:27-21]; or

[2. Is located at a facility subject to the emission statement requirements of N.J.A.C. 7:27-21, but is not individually listed in the facility's emission statement as a source operation with VOC or NO_x emissions]. An example of an area source is consumer and commercial products.

["Attainment area" means any area that the EPA has designated or redesignated at 40 CFR Part 81 or pursuant to 42 U.S.C. §7407 as "attainment" or "unclassifiable" for the ozone NAAQS.]

"Batch [of DERs]" means, with respect to DER credits, the set of [NO_x and/or VOC DERs generated by a single emissions source and] DER credits included in a single Notice [and Certification] of [DER] Generation submitted to the registry. Such a set shall include all credits resulting from the implementation of a specific emission reduction strategy during a single generation period.

...

"BTU" means British thermal unit.

"Calendar quarter" means January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31.

"Carbon equivalent" means the weight of a quantity of a greenhouse gas multiplied by its global warming potential and then also multiplied by the ratio of the molecular weight of carbon to that of carbon dioxide.

"Ceiling rate" means the user source's maximum allowable emission rate during the use period, when DER credits are being used for permit insurance. Such a rate will typically be higher than the corresponding limit in the source's permit. A ceiling rate is selected and specified by the user and is set forth in the Notice of Intent to Use.

"Complete" means, with respect to a notice, containing all information, supporting documentation, statements, and certification required for such a notice under this subchapter.

...

"Curtailement" means a temporary or partial reduction in an emissions source's [activity level (e.g., hours of operation or process rate)] economic output. For the purposes of this [rule] subchapter, this term does not include either of the following reductions:

1. (No change.)

2. A reduction in [an electric generator's activity level] the production of electricity that results from implementing electrical energy efficiency measures [in residential, commercial, industrial, institutional or government facilities].

...

"DER credit" or "credit" means a tradable entity, based on discrete emission reductions which meet the applicable requirements in this subchapter at N.J.A.C. 7:27-30.4(e) or (f) and at N.J.A.C. 7:27-30.6. The value of such a credit shall be given in units of weight, such as pounds or tons.

"Discrete emission reduction" [or "DER"] means [a unit] a quantity of emission reductions [generated], given in units of weight such as pounds or tons, that were realized over a finite period of time and have been quantified in accordance with this subchapter.

"Economic output" means the [output which] goods and/or services which are produced by an [emission] emissions source [produces] during a [selected] specified period of time. Examples [of economic output may] include [production output, amount of coating application, or vehicle miles traveled] quantity of products and product intermediates manufactured; the flux of usable energy, measured at the point of use, in units such as lumens of light, ton hours of cooling, British thermal units of thermal energy, or kilowatt hours of electricity; the number of square feet interior area illuminated, heated, or cooled to a given standard; or the number of miles a given number of individuals or a given weight or volume of materials are transported.

["Electric generator" means any person who generates electric power.

“Emission quantification protocol” means a method to determine the quantity of DERs generated or the quantity of DERs needed for compliance.]

“Emissions source” means any mobile source, nonroad source, or stationary source.

...

“Fleet” means ten or more vehicles under common ownership.

“Fugitive emissions” means any emissions of an air contaminant released directly or indirectly into the outdoor atmosphere which do not pass through any stack or chimney.

“Generation period” means that period of time [over]during which a batch of [DERs] DER credits is generated.

“Generator” means [the owner or operator of a generator source, or] a person [who causes emission reductions to be generated through actions listed in N.J.A.C. 7:27-30.4(a)1 or 2] who generates one or more DER credits pursuant to this subchapter.

“Generator source” means any emissions source that generates emission reductions [to be] that are used as a basis for [a batch] generation of [DERs] DER credits.

“GHG credit” means a DER credit based on reductions of a greenhouse gas. One GHG credit has an assigned value of one metric ton (2205 pounds) of carbon equivalent.

“Global warming potential” is the ratio of the global heat-trapping effect, both direct and indirect, of one mass unit of a gas to that of the same mass unit of carbon dioxide over a given period of time. The 100-year period recommended by the Intergovernmental Panel on Climate Change (IPCC) shall be used for the purposes of this subchapter. A list of the GWPs of greenhouse gases is provided in Appendix B of this subchapter.

“Greenhouse gas” or “GHG” means any of the following gases: carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); certain hydrofluorocarbons (HFC23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310me; certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulfur hexafluoride (SF₆).

...

“Hold” means to have the registry show that a DER credit is credited to one's account.

...

“Nonroad source” means a nonroad engine or nonroad vehicle, as defined at 42 USC 7550. Examples of nonroad sources include gasoline-fueled lawnmowers, dredging and land-moving equipment, and tractors used in farming.

[“Normal source operation” means a condition in which an emissions source's activity level falls within a range that is typical for that emissions source.]

“NO_x credit” means a DER credit based on reductions of NO_x. One NO_x credit has an assigned value of 100 pounds (i.e., one-twentieth of a ton) of NO_x.

...

“Oxides of nitrogen” or “NO_x” means all oxides of nitrogen, except nitrous oxide (N₂O), as measured by test methods approved by the Department and EPA, such as the test methods set fourth at 40 CFR Part 60 Appendix A, methods 7 through 7E.

...

“Permit insurance” means a method for a permittee to comply, through use of DER credits in accordance with N.J.A.C. 7:27-30.14(d), with a permit limit, including a limit on the amount of emissions, activity level, or hours of operation. Under this method, the reduced emissions required pursuant to a permit limit are assured of being obtained. However, instead of the permittee reducing the emissions of the emission source subject to the permit limit, the permittee relies on voluntarily emission reductions from a different emission source, which are used as the basis for DER credits, to meet the emission reduction requirement. Generally, this method is for complying with a limit currently established in the current permit; however in some circumstances, if a permittee has submitted an application seeking a revised permit limit, this method may be used to comply with the limit that will be established when the Department acts on the permit application. The three classes of permit insurance authorized under this subchapter are set forth at N.J.A.C. 7:27-30.14(e).

...

“Quantification protocol” means a document setting forth the quantification guidance and methods needed for credit generation and credit use, including but not limited to the following:

1. For a Notice of Generation, determining the number of DER credits that have been generated by a generator source;
2. For a Notice of Intent to Use, determining the number of DER credits that a user shall hold when the notice is submitted; and
2. For a Notice of Use, determining the number of DER credits used.

...

“Registry” means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer [and], voluntary retirement, use, and invalidation of [DERs]DER credits.

"Retire" means, with respect to [DERs]DER credits, to make a DER credit permanently unavailable for use.

“Shutdown” means the permanent cessation of [the activity that results in] production of an emissions source, such that it no longer has economic output or emissions [at all or part of an emissions source]. For the purposes of this subchapter, scrappage of mobile sources is not considered a shutdown.

...

“Stationary source” means [an emissions] generally any source [that is not] of air contaminant emissions, except a mobile source or a nonroad engine or nonroad vehicle.

“Surplus” means, with respect to emission reductions used for the generation of [DERs]DER credits, not required pursuant to any air quality emission limit or standard in any applicable State or federal law, regulation, permit, or order and not relied upon in a SIP. [An emission reduction calculated in accordance with N.J.A.C. 7:27-30.5 and 30.20, and not prohibited as a basis for DERs under N.J.A.C. 7:27-30.6, is considered surplus.]

“Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)’ guidance document” means the EPA guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, on December 22, 1998, and as may be amended and supplemented, incorporated by reference herein. For reference, excerpts from this guidance document are set forth herein in Appendix C. However, if a discrepancy is found between the Appendix C and the EPA document, the provisions of the EPA document shall prevail.

“Use period” means the period of [the] time [when] during which a user uses [DERs to comply with an applicable emission limit] DER credits.

“Useful life” means the length of time that equipment or control apparatus can be expected, from the time it initially commences to operate, to continue to operate. For the purposes of this subchapter, this length of time shall be determined in accordance with the first listed method that applies:

1. If the manufacturer provides a warranty for the useful life of the equipment, the length of time guaranteed by the warranty;
2. If standard industry information is available, the length of time shown by that information to be average or typical; and

3. Otherwise, the length of time over which the permittee depreciates the capital cost of the equipment or control apparatus.

...

“User source” means any emissions source for which the owner or operator seeks to use [DERs]DER credits for compliance in accordance with this subchapter.

...

“VOC credit” means a DER credit based on reductions of VOC. One VOC credit has an assigned value of 100 pounds (i.e., one-twentieth of a ton) of VOC.

7:27-30.3 General provisions

- (a) [A DER used for compliance under this subchapter is a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and rules promulgated thereunder.] A DER credit represents a tradeable quantity of emission reductions, recognized pursuant to this subchapter. A credit does not constitute or convey a property right. Nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit [such authorization] DER credit(s).
- (b) A person may generate, transfer or [use DERs] voluntarily retire DER credits in accordance with this subchapter, without prior federal, State or local government approval. A person may also use VOC or NO_x credits without such prior approval, except when [DERs] the credits are to be used pursuant to N.J.A.C. 7:27-[30.13(c)]30.14(g) to comply with emission offset requirements under N.J.A.C. 7:27-18.
- [(c) Any submittal to the Department that is required or allowed under this subchapter shall be made to the applicable address listed below:
1. If the submittal concerns a generator source or user source located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Enforcement
CN 407
Trenton, NJ 08625-0407
 2. If the submittal concerns a generator source or user source located in Bergen, Essex, Hudson, or Union County:

Department of Environmental Protection
Metro Regional Office
Air and Environmental Quality Enforcement
2 Babcock Place
West Orange, NJ 07052

3. If the submittal concerns a generator source or user source located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Enforcement
1259 Route 46, Building 2
Parsippany-Troy Hills, NJ 07054

4. If the submittal concerns a generator source or user source located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Enforcement
20 East Clementon Road
Gibbsboro, NJ 08525

- (d) Any submittal to the registry that is required or allowed under this subchapter shall be made to the following address:

Mosakin International Corporation
1075 Easton Avenue
Tower 3, Suite 4
Somerset, New Jersey 08873
Attention: Emissions Trading Registry]

- [(e)](c) [A DER represents one twentieth of a ton of emission reductions. Any quantity of DERs generated shall be rounded to the next lowest twentieth of a ton. Any quantity of DERs used shall be rounded to the next highest twentieth of a ton.] Only a whole [DERs] number of DER credits may be generated, verified, transferred, voluntarily retired, used, found invalid, or cancelled.

7:27-30.4 DER credit generation: general requirements

- [(a) Except as provided under N.J.A.C. 7:27-30.6, a person may generate one or more DERs by taking an action to reduce the actual emission rate of a generator source owned or operated by the person below the source's baseline emission rate. An owner or operator of a facility

may also generate one or more DERs, if the facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D-48, by taking pollution prevention measures which reduce the facility's fugitive emissions (as defined at N.J.A.C. 7:27-18.1); and an owner or operator of a refinery may generate one or more DERs by reformulating motor vehicle fuel sold in New Jersey. In addition, a person may generate one or more DERs through the reduction of emissions from sources not owned or operated by that person, by causing emission reductions to result from either of the following:

1. A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or
2. A reduction in an electric generator's activity level that results from implementing electrical energy efficiency measures in residential, commercial, industrial, institutional or government facilities.]

(a) A person may generate one or more DER credits pursuant to this section. However no person may generate one or more credits unless the person:

1. Implements a strategy which reduces the actual emissions of a generator source or group of generator sources below its baseline emissions;
2. Conforms to all applicable provisions of this subchapter, including but not limited to the requirement that a DER credit be based on emission reductions that are real, surplus, and properly quantified; and
3. Is authorized under (b) below to be the generator of the credits.

(b) The generator of a DER credit shall be the owner or operator of the generator source, except as provided in (c) below, and except in the following circumstances:

1. The generator source is a fuel, and the generation strategy is the reformulation of the fuel so as to decrease emissions from the fuel as it is distributed, stored, and/or sold for use in New Jersey. In such case, the person who implements the reformulation (i.e., the owner or operator of the refinery or, if applicable, a person who is defined pursuant to N.J.A.C. 7:27-25.1 as a blender) is authorized to be the generator;
2. The generator source(s) are mobile sources or nonroad sources operated in New Jersey, and the generation strategy is:
 - i. The reduction in the sources' activity levels through implementation of an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50). In such case, the person who obtains approval of and implements the plan is authorized to be the generator;

- ii. The replacement of conventional vehicles in a fleet with lower-emitting vehicles or the modification of fleet vehicles to make them lower-emitting. In such case, the owner of the fleet is authorized to be the generator; and
 - iii. The testing (or more frequent testing) and repair of motor vehicles. In such case, the person who conducts the test and repair program is authorized to be the generator;
 - 3. The generator sources are consumer or commercial products (such as architectural coatings) which release emissions during their distribution, storage, or use, and the generation strategy is the reformulation or redesign of the products so that less emissions are released during the product's distribution, storage or use in New Jersey. In such case, the person who produces the reformulated or redesigned product (that is, the product manufacturer) is authorized to be the generator;
 - 4. The generator sources are electric generating units located in New Jersey, and the generation strategy is the reduction in the electric generating units' activity level by implementing electrical energy efficiency measures in a residential, commercial, industrial, institutional, or governmental facility that is located in New Jersey. In such case, the person who is the electricity consumer (i.e., the owner or operator of the facility) is authorized to be the generator; or
 - 5. The generator source is the production of virgin materials (including but not limited to their extraction, harvesting, or manufacture, and their handling and transport) that are sold for use as a consumer or commercial product in New Jersey, or that are used as a raw material in a manufacturing process in New Jersey; and the generation strategy is the substitution of recycled materials for the virgin materials. In such case, the person who produces the recycled material in a form in which it is used (either as a product or as a raw material) as a substitute for virgin material is authorized to be the generator. For example, for recycled plastics, the post-consumer or post-industrial processor who produces recycled polymers in the form (pellets or flakes) that they are used by a plastics product manufacturer is authorized to be the generator.
- (c) If the person authorized to generate credits under (b) above enters a collective agreement under which the generation strategy would be implemented by another person authorized by the agreement to act on behalf of all signatories to the agreement, then the right to generate credits based on that strategy transfers to the other person, and the individual signatories are preempted from being generators.
- (d) If the emission reduction strategy entails a change in equipment or control apparatus and that change is subject to permit requirements under N.J.A.C. 7:27-8 or 22, the permittee shall obtain the new permit or the modification or revision of the existing permit prior to commencing implementation of the emission reduction strategy.

- [(b)](e) [DERs] DER credits shall be based only on discrete emission reductions that are real[,] and surplus, and are quantified in accordance with N.J.A.C. 7:27-30.5, 24, and [A DER shall not be based on an emission reduction which has previously been the basis for generating a DER] 25.
- (f) If DER credits are to be based on reductions in emissions of a compound which may be classified as either a VOC or a GHG, then a generator may generate either VOC credits or GHG credits, but not both.
- [(c)](g) The generation period for any batch of DERs shall not exceed one year. However, [additional batches of DERs may be generated over consecutive generation periods] if a single generation strategy continues year after year to realize reductions, a generator may each year generate DER credits based on the strategy, provided that the generator meets the notice requirements set forth at N.J.A.C. 7:27-30.7 for each successive generation period.

[7:27-30.5 DER generation: computation of DERs

- (a) The generator shall calculate the quantity of DERs generated in accordance with this section and an emission quantification protocol that satisfies the requirements of N.J.A.C. 7:27-30.20.
- (b) The quantity of DERs generated is the difference between baseline emissions and actual emissions. The following formula describes the calculation:

$$\text{DERs} = (\text{Baseline Emission Rate} - \text{Actual Emission Rate}) \times \text{Economic Output}$$

where:

1. DERs is the quantity of discrete emission reductions generated, rounded to the next lowest twentieth of a ton of VOC or NO_x;
2. The baseline emission rate is the rate at which the generator source would have emitted VOC or NO_x (as applicable) had it not taken measures to generate DERs. To calculate the baseline emission rate:
 - i. Select the lowest of the following rates which applies to the generator source:
 - (1) The lowest allowable emission rate which applies to the generator source during the generation period, minus a design margin. If the Department has approved an alternative emission limit for the source, the lowest allowable emission rate is the lowest rate which would apply in the absence of the alternative emission limit, minus a design margin;

- (2) The generator source's actual emission rate during the baseline period described in (c) below; or
 - (3) The emission rate which would have resulted had the generation strategy not been applied, based on measurements made during the generation period, taken upstream of the point of application of the generation strategy. If it is not technically feasible to take such measurements, this emission rate shall not be considered in determining the baseline emission rate;
 - ii. Calculate the quantity of VOC or NO_x which would have been emitted at the rate selected under (b)2i above.
 - (1) If (b)2i(1) or (3) above was selected, and the rate is expressed as emissions per unit of activity, multiply the rate by the generator source's activity during the generation period;
 - (2) If (b)2i(1) or (3) above was selected, and the rate is expressed as emissions per unit of time, multiply the rate by the amount of time in the generation period;
 - (3) If (b)2i(2) above was selected, and the rate is expressed as emissions per unit of activity, multiply the rate by the generator source's activity during the baseline period described in (c) below; and
 - (4) If (b)2i(2) above was selected, and the rate is expressed as emissions per unit of time, multiply the rate by the amount of time in the baseline period described in (c) below; and
 - iii. If (b)2i(1) or i(3) above was the rate selected under (b)2i above, divide the quantity determined under ii above by the generator source's economic output in the generation period. If (b)2i(2) was selected, divide the quantity determined under (b)2ii above by the generator source's economic output in the baseline period described in (c) below. The result is the baseline emission rate, expressed as the quantity of VOC or NO_x emitted per unit of economic output;
3. The actual emission rate is the rate at which the generator source actually emitted VOC or NO_x (as applicable) during the generation period. The actual emission rate is expressed as the quantity of VOC or NO_x emitted per unit of economic output. The unit of economic output is the same as the unit used under (b)2iii above; and
4. Economic output is the generator source's economic output during the generation period.

- (c) The baseline period includes two intervals in the five calendar years before the generation period (or the first of multiple consecutive generation periods) began. These intervals shall contain the same dates, that is, month(s) and date(s), as the dates in the generation period. Of the five such intervals available (that is, one interval in each of the five calendar years), the generator shall use as the baseline the two which are most representative of normal source operation for the generator source. The generator source's actual emission rate, activity, or economic output during the baseline period is the sum of its actual emission rate, activity, or economic output in each of the two intervals, divided by two.
- (d) If the action taken to reduce actual emissions results in emission increases from emissions sources other than the generator source, the quantity of DERs generated shall be reduced by the amount of those emission increases.
- (e) If the generator source's actual emissions (that is, the rate described in (b)3 above multiplied by economic output described in (b)4 above) over any part of the generation period exceed the maximum quantity of emissions which the generator source's permit authorizes, no DERs shall have been generated during that part of the generation period.]

7:27-30.5 DER credit generation: computation of credits

- (a) A generator shall calculate the quantity of DER credits generated in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27-30.24 and 25.
- (b) The number of DER credits generated shall be determined by calculating the quantity of discrete emission reductions on which credits may be based in accordance with (c) below; and then converting this quantity to a number of credits in accordance with (j) below.
- (c) The quantity of discrete emission reductions on which credits may be based shall be calculated in accordance with the following formula:

$$\text{ER} = (\text{Baseline Emissions}) - (\text{Actual Emissions})$$

where:

ER = the quantity of discrete emission reductions generated during the generation period, given in units of weight (for example, pounds or tons);

Baseline Emissions = the quantity of emissions which the generator source would have emitted during the generation period if the generator had not implemented the strategy to reduce the emissions. If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, this quantity shall be determined in accordance with (d) below, except when the generator is generating credits over multiple

consecutive years. In such case, for the second year, and each year thereafter, baseline emissions shall be determined in accordance with (h) below; and

Actual Emissions = the quantity of emissions that the generator source actually emitted during the generation period.

(d) If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, the source's baseline emissions shall be the lowest of the following: the source's allowable emissions, the source's adjusted historic emissions, or the source's measured emissions. Each of these shall be determined as follows:

1. The source's allowable emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the lowest allowable emission rate which applies to the generator source during the generation period, minus a design margin. In determining the lowest allowable emission rate, the following shall be taken into consideration if applicable:

i. If the Department has approved a higher emission rate as an alternative emission limit for the source pursuant to N.J.A.C. 7:27-16 or 19, the rate which would have applied in the absence of the alternative emission limit (and not the alternative emission limit) shall be taken into consideration in determining the lowest allowable emission rate which applies to the source; and

ii. If a new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, is required under N.J.A.C. 7:27-8 or 22 for the emission reduction strategy, the permit or operating certificate limit which shall be taken into consideration in determining the lowest allowable emission rate which applies to the source is:

(1) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department prior to [the date which is the operative date of these amendments], the new limit; and

(2) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department on or after [the date which is the operative date of these amendments], the limit which applied prior to the issuance of the new or revised permit or operating certificate (and not the new limit);

2. The source's adjusted historic emissions shall be its historic emissions adjusted for any difference between the source's economic output during the historic baseline period and during the generation period. A source's adjusted historic emissions shall be determined in accordance with the following formula:

$$\text{Adjusted Historic Emissions} = \left(\frac{EO_G}{EO_H} \right) (\text{Historic Emissions})$$

where:

Adjusted Historic Emissions = The source's historic emissions, adjusted for any difference between the source's economic output during the historic baseline period and during the generation period;

EO_G = The economic output of the generator source during the generation period;

EO_H = The generator source's historic economic output determined in accordance with (e) below, expressed in the same units as is used for economic output during the generation period; and

Historic Emissions = The emissions calculated in accordance with (e) below; or

3. The source's measured emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the emission rate which would have resulted had the generation strategy not been applied, determined from measurements made upstream of the point of application of the generation strategy. If the strategy entails the replacement of a control apparatus, subtract the emission reductions that would have been realized by the replaced control from the total emissions calculated. If it is not technically feasible to take the upstream measurements, this approach shall not be considered in determining the source's baseline emissions;

(e) A generator source's historic emissions shall be calculated using the source's historic emission rate, historic activity level, and historic hours of operation. These terms, as well as the source's historic economic output, shall be derived as follows:

1. Determine the source's historic baseline period. This period shall be based on one or more intervals subsequent to January 1, 1990, selected as follows:
 - i. If the source has operated for five years or more since January 1, 1990:
 - (1) Identify, in accordance with (f) below, the time interval which corresponds to the generation period in each of the five years immediately preceding a date selected pursuant to (g) below;
 - (2) Determine for each of the five intervals the source's emissions per unit of economic output;

- (3) Disregard the interval that has the highest emissions per unit of economic output and the interval that has the lowest emissions per unit of economic output; the three remaining intervals shall be the historic baseline period;
 - ii. If the source has operated for four years since January 1, 1990, determine in accordance with (f) below the time interval in each of the three most recent years which corresponds to the baseline period. The historic baseline period shall be these three intervals; and
 - iii. If the source has operated for one to three years since January 1, 1990, determine in accordance with (h) below the time interval in each of these years which corresponds to the baseline period. The historic baseline period shall be these intervals;
- 2. Using the historic baseline period determined under 1 above, determine the value of the terms, as follows:
 - i. The source's historic emission rate shall be its average emission rate during the historic baseline period;
 - ii. The source's historic activity level shall be its average activity during the historic baseline period;
 - iii. The source's historic hours of operation shall be its average hours of operation per interval during the historic baseline period. Therefore, if the historic baseline period includes three intervals, the source's historic hours of operation would be its total hours of operation during the historic baseline period divided by three; and
 - iv. The source's historic economic output shall be its average economic output per interval during the historic baseline period. Therefore, if the historic baseline period includes two intervals, the source's historic economic output would be its total economic output during the historic baseline period divided by two.
- (f) A time period shall be considered to be an interval that corresponds to a given generation period if the period begins in a different year but on the same calendar date (for example, April 15) as the generation period, and has the same duration as the generation period.
- (g) In determining a historic baseline period, a generator shall consider the year(s) prior to a date selected as follows:

1. If pursuant to N.J.A.C. 7:27-30.6(b)4 the generator is generating “early” VOC or NO_x credits based on emission reductions that occurred between May 1, 1992, and August 2, 1996, the date shall be the day the strategy was first implemented;
 2. If pursuant to N.J.A.C. 7:27-30.6(c) the generator is generating “early” GHG credits based on GHG emission-reducing strategies that were first implemented between January 1, 1991 and [the date which is the operative date of these amendments], the date shall be the day the strategy was first implemented; or
 3. Otherwise, the date shall be the first day of the generation period.
- (h) A generator who generates DER credits pursuant to N.J.A.C. 7:27-30.4(g), based on emission reductions realized over multiple years from implementation of a single generation strategy, may in the calculation of baseline emissions for the second year of DER credit generation, and each year thereafter, use the same value for “historic emissions” as was used in the first year, provided that:
1. The generator generates credits for each successive consecutive generation period;
 2. This continuous generation is reflected in the generator’s annual submission of a Notice of Generation;
 3. Each year’s generation period corresponds to the initial generation period, as determined pursuant to (f) above; and
 4. If the generator discontinues DER credit generation, and later decides to resume credit generation based on the initial generation strategy, baseline emissions are recalculated pursuant to (d) above, using information from the years immediately preceding the new generation period.
- (i) The quantity of emission reductions calculated under (c) above shall be discounted in accordance with the following, as applicable:
1. If the generation strategy results in increases of actual emissions of that air contaminant from one or more emissions sources other than the generator source, located at the facility or offsite, the quantity of emission reductions shall be reduced by the amount of those emission increases, as follows:
 - i. For each resulting pound of VOC increases (if VOC credits are being generated) or NO_x increases, (if NO_x credits are being generated), a pound shall be subtracted; and
 - ii. For GHG, for each resulting pound of increased emissions of carbon equivalent, a pound of carbon equivalent shall be subtracted;

2. If the generator source's actual emissions or actual emission rate for any air contaminant during any part of the generation period exceeded any applicable limit established in its permit (unless the exceedance is authorized pursuant to the permit insurance provisions at N.J.A.C. 7:27-30.14(d) and (e) or under applicable federal or State law or rules, the quantity of emission reductions shall be reduced to reflect that no emission reduction, generated during that part of the generation period, may be used as the basis for a credit;
 3. For VOC and NO_x, if the emission reductions calculated under (c) above have been relied on to any degree in the SIP, the quantity of the emission reductions shall be reduced to that extent; and
 4. If the emission reductions are reductions that were banked pursuant to N.J.A.C. 7:27-18.8 and that are being converted to DER credits, the quantity of the emission reductions shall be reduced pursuant to N.J.A.C. 7:27-18.8(e) if the generator source is subject to a new emission limit established under a State or federal statute, rule, or regulation.
- (j) The number of DER credits generated shall be determined by converting the quantity of emission reductions calculated under (c) above, expressed in pounds, and as discounted pursuant to (i) above (if applicable), into the number of DER credits generated in accordance with the following:
1. For VOC or NO_x, divide the quantity of emission reductions (given in pounds) by 100 pounds;
 2. For a greenhouse gas, divide the quantity of emission reductions (given in pounds of carbon equivalent calculated pursuant to (k) below) by 2205 pounds;
 3. If the registry will receive a complete Notice of Generation late, the number calculated pursuant to (j)1 or 2 above shall be reduced for such lateness in accordance with N.J.A.C. 7:27-30.7(b); and
 4. If the result obtained is a whole number, that is the number of DER credits generated; otherwise the result shall be rounded down to the next lowest whole number to determine the number of DER credits generated.
- (k) A quantity of any greenhouse gas, given in pounds, may be converted to a pound of carbon equivalent using the following formula:

$$CE = 0.2727 \times (GHG) \times (GWP)$$

where:

CE = A quantity of carbon equivalent, expressed in pounds;

0.2727 = The ratio of the molecular weight of carbon to that of carbon dioxide;

GHG = A given quantity of a specific greenhouse gas, expressed in pounds; and

GWP = The global warming potential of the specific greenhouse gas, as listed in Appendix B.

- (l) For VOC and NO_x, if part of the generation period falls within the ozone season and part outside the ozone season, a generator shall perform the calculations in (c), (i), and (j) above separately for those emission reductions generated during the ozone season and for those emission reductions generated outside the ozone season. The total number of credits generated shall be the sum of the credits generated during the ozone season and the credits generated outside the ozone season.

7:27-30.6 DER credit generation: limitations [on generation]

- (a) None of the following emission reductions is a basis for generation of a DER credit:
1. - 2. (No change.)
 3. An emission reduction that is required to comply with a requirement in the [Federal]~~federal~~ Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), any regulation, permit, operating certificate, or order pursuant thereto; any air quality emission limit or standard in any applicable law, regulation, permit, or order; or any SIP or Federal Implementation Plan [(c)except [to the extent that emissions]]:
 - i. If emissions are reduced below the level required to comply, they may be used as the basis for generation of a DER credit[]]; and
 - ii. As provided in the procedures for calculating baseline emissions at N.J.A.C. 7:27-30.5(d)1ii.
 4. An emission reduction which has been used under any other emissions trading program [, or which] as the basis for a credit under any other emissions trading program. For example, an emission reduction which has been used as the basis for a claim for early reduction credit in the NO_x Budget Program pursuant to N.J.A.C. 7:27-31.12 may not also be used a basis for generation of a DER credit. However, this prohibition does not include emission reductions banked under the provisions of the Emission Offset Rule at N.J.A.C. 7:27-18.8 or a NO_x Budget Program allowance which is being converted to a DER credit pursuant to N.J.A.C. 7:27-30.27;
 5. An emission reduction which has previously been used as the basis for generating a DER credit under this subchapter;

- [5. An emission reduction occurring at a generator source which received approval from the Department of an alternative emission limit (including, without limitation, an emission limitation that is part of an averaging plan) to meet a requirement for reasonably available control technology (RACT) under N.J.A.C. 7:27-16 or 19, except to the extent that the emissions are reduced below the level that would have been required had the approval of the alternative emission limit not been issued;
6. An emission reduction from a stationary source that is subject to N.J.A.C. 7:27-16 or 19, but for which the Department has not yet established an applicable RACT limit either in the rule or in a facility-specific emissions limit submitted to the EPA as a SIP revision;]
6. An emission reduction which is accompanied by an increase in a source's emissions of a HAP from a level below the applicable emission threshold set forth in Table C or Table D at N.J.A.C. 7:27-8, Appendix I, to a level above the threshold;
7. An emission reduction which is accompanied by an increase in emissions of any HAP (from the emissions source or from any other source at the facility or off-site) which exceeds the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. §7412(g). The de minimis levels are as currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative correction pursuant to N.J.A.C. 1:30-2.7; [and]
8. An emission reduction which is accompanied by a violation of a [Federal] federal or State law, regulation, order or permit. For example, if the generator source's actual emissions or actual emission rate for any air contaminant during any portion of the generation period [exceed the maximum quantity of emissions which] exceeds any applicable limit established in the generator source's permit [authorizes for such portion of the generation period, no [DERs] DER credits shall have been generated[.] during that portion of the generation period;
9. An emission reduction that results from the implementation of a regionally significant highway project or a regionally significant transit project as defined in 40 CFR 93.101;
10. An emission reduction that is not a consequence of an action taken by the generator, including but not limited to reductions resulting from chance events such as changes in the weather;
11. An emission reduction from a generator source that is not located in New Jersey; or
12. An emission reduction from a new emission source which has operated for less than one year prior to the first day of the generation period; or from a new product which

has been distributed, stored, or sold for use in New Jersey for less than one year prior to the first day of the generation period.

- [(b) No emission reduction generated before May 1, 1992 is a basis for generation of a DER. An emission reduction generated at any time between May 1, 1992 and August 2, 1996 may be a basis for generation of a DER only if it satisfies the applicable requirements of this subchapter, and one of the following occurs on or before October 31, 1996:
1. The Department informs the generator in writing that the emission reduction is real, surplus, and properly quantified; or
 2. The generator submits to the Department and the registry a Notice and Certification of DER Generation in accordance with N.J.A.C. 7:27-30.7 for the emission reductions.
- (c) No emission reduction is the basis for generation of a DER until the generator source's emissions are reflected in the emissions inventory submitted by the State to the EPA for inclusion in the SIP, or in the annual major point source emission inventory conducted pursuant to N.J.A.C. 7:27-21. Appendix A lists the emissions included in the emissions inventory as of August 2, 1996.]
- (b) None of the following emission reductions is a basis for generation of a VOC or NO_x credit:
1. An emission reduction below an alternative emission limit approved by the Department for the generator source(s) pursuant to the alternative control plan provisions at N.J.A.C. 7:27-16.17(a)2, the facility-specific NO_x emission limit provisions at N.J.A.C. 7:27-19.13(a)2, or the emission averaging provisions at N.J.A.C. 7:27-19.6, except to the extent that the emissions are reduced below the limit that would otherwise apply;
 2. An emission reduction from a stationary source that is subject to N.J.A.C. 7:27-16 or 19, but for which the Department has not yet established an applicable RACT limit either in the rule or in a source-specific emissions limit submitted to the EPA as a SIP revision;
 3. An emission reduction generated before May 1, 1992. Furthermore, an emission reduction generated at any time between May 1, 1992 and August 2, 1996 may be a basis for generation of a DER credit only if it satisfies the applicable requirements of this subchapter, and one of the following occurred on or before October 31, 1996:
 - i. The Department informed the generator in writing that the emission reduction is real, surplus, and properly quantified; or

- ii. The generator submitted to the Department and the registry a Notice of Generation in accordance with N.J.A.C. 7:27-30.7 for the emission reduction;
or
- 4. An emission reduction from a generator source whose emissions are not reflected in the emissions inventory submitted by the State to the EPA for inclusion in the SIP, or in the annual major point source emission inventory conducted pursuant to N.J.A.C. 7:27-21. Appendix A lists the emissions included in the emissions inventory as of August 2, 1996.
- (c) An emission reduction generated prior to [the date which is the operative date of these amendments] may not be used as the basis for generation of a GHG credit. For GHG emission-reducing strategies that were first implemented after 1990 but prior to [the date which is the operative date of these amendments], GHG credits may be based on the emission reductions realized from these strategies on and after [the date which is the operative date of these amendments], provided that the Notices of Generation for the first generation period and each additional generation period up to the current year is submitted no later than [the date which is one year plus 90 days after the operative date of these amendments].
- (d) A DER credit shall not be based on the reduction of a facility's fugitive emissions unless:
 - 1. The facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D-48; and
 - 2. The fugitive emissions are reduced by the owner or operator taking pollution prevention measures.
- (e) If the emission reduction strategy is the replacement of an existing emission source with a lower-emitting source, notwithstanding the provisions of N.J.A.C. 7:27-30.4(g) which provide for continuing generation of DER credits year after year from a single emission reduction strategy, no DER credit shall be based on the reductions realized by the replacement source after the end of the useful life of the replaced source.

[7:27-30.7 DER generation: Notice and Certification of DER Generation]

- (a) For each batch of DERs generated, the generator shall submit a Notice and Certification of DER Generation to the registry within 90 days after the last day of the generation period. If the generator submits the Notice late, the generator shall reduce the quantity of DERs in the Notice by ten percent immediately, and by an additional ten percent for each additional 30 days that the Notice is late. For example, if a generator has generated 100 tons of DERs, but submits the Notice 40 days late, the generator shall include only 80 tons of DERs in the Notice.
- (b) In the Notice, the generator shall include the information, statements and certification required under N.J.A.C. 7:27-30.16 (except for the supporting information listed in N.J.A.C.

7:27-30.16(c)4, and the serial number referenced in N.J.A.C. 7:27-30.16(c)6), and the following:

1. If the emission reductions on which the DERs are based were accompanied by increases in emissions of any HAP, the amount of such increases;
2. A statement that the emission reductions on which the DERs are based are both real and surplus;
3. A statement that the DERs were not generated from an emissions reduction listed in N.J.A.C. 7:27-30.6 or as a result of actions prohibited under this subchapter or other provisions of law; and
4. If the generator filed the Notice more than 90 days after the last day of the generation period, a statement that the generator has reduced the quantity of DERs as required under (a) above.]

7:27-30.7 DER credit generation: Notice of Generation

- (a) A generator shall submit a Notice of Generation in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.
- (b) The deadline for timely submittal of a complete Notice of Generation is 90 days after the last day of the generation period. A Notice of Generation that is received by the registry after this deadline is late, and the following shall apply:
 1. Within the notice the generator shall initially reduce the quantity of credits claimed in the notice by ten percent for the lateness, and shall further reduce the number of credits claimed by an additional ten percent of the original quantity claimed for each full increment of 30 days beyond the deadline that the notice is submitted. For example, if a generator could have claimed 100 credits, but submits the notice 40 days late, the generator shall claim only 80 credits; and
 2. A Notice of Generation shall not be submitted later than 270 days after the deadline.
- (c) Emission reductions from more than one generator source may be grouped together and submitted as a batch in single Notice of Generation only if:
 1. The generator sources are:
 - i. All stationary sources subject to an averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6; or

- ii. A group of more than one stationary source of the same type located at a single facility and the same generation strategy is used for each; or
 - 2. The reductions are the fugitive emission reductions at a facility subject to a facility-wide permit issued pursuant to N.J.S.A. 13:1D-48 which result from pollution prevention measures;
 - 3. The reductions are generated through the implementation of any of the generation strategies listed at N.J.A.C. 7:27-30.4(b)2 through 5, and the reductions are realized from the implementation of a single generation strategy; or
 - 4. The generator is an agent authorized under N.J.A.C. 7:27-30.4(c) to implement one or more emission reduction strategies for emission sources owned or operated by the signatories to the agreement, and the emission reductions are the reductions realized from the implementation of a single generation strategy at facilities under the control of the signatories.
- (d) A Notice of Generation shall include the following:
- 1. Name and address of the generator, the generator's type of business (for example, electric utility or architectural coating manufacturer), and other pertinent identifying information including the name and telephone number of a contact person;
 - 2. If the generator is an agent authorized to act on behalf of all signatories to a multi-party agreement, and authorized pursuant N.J.A.C. 7:27-30.4(c) (in lieu of the signatories) to be the generator of DER credits, a copy of the collective agreement and a list of all signatories to the agreement, together with the identifying information required under 1 above for each signatory;
 - 3. A description of the generation strategy employed;
 - 4. For the generator source(s), the identifying information specified at N.J.A.C. 7:27-30.18(d), except in the cases given in (d)4i and ii below. In these cases only a general class (and not specific generator source(s)) shall be identified, and the additional requirements set forth in (d)4i and ii below shall be satisfied:
 - i. If the generation strategy is the implementation of energy efficiency measures, in lieu of identifying the specific generator source(s), the address and county of the facilities where the measures were implemented; and
 - ii. If the generation strategy is the substitution of recycled materials for virgin materials that would otherwise be sold for use as a consumer or commercial product or as a raw material in a manufacturing process, in lieu of identifying the specific production process for the virgin materials, the generator shall provide documentation that the recycled materials were sold for use as a

consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process;

5. The month, day, and year of the first and last dates of the generation period;
6. A demonstration that the person submitting the notice is the person authorized under N.J.A.C. 7:27-30.4(b) to be the generator of the credits;
7. One of the following:
 - i. If a quantification protocol approved by EPA or the Department is used to calculate the number of DER credits generated, citation of that protocol; or
 - ii. The quantification protocol used, and a statement that the protocol meets the requirements for protocols at N.J.A.C. 7:27-30.25;
8. The type of DER credits being generated (for example, VOC credits or NO_x credits);
9. The number of each type of DER credits determined, pursuant to N.J.A.C. 7:27-30.5 and the quantification protocol, to have been generated; for VOC and NO_x credits, the number based on reductions during the ozone season and for the rest of the year shall be given separately;
11. If the generation of the DER credits resulted in an increase, de minimis or otherwise, in the actual emissions of any HAP, either at the facility or off-site, the name of the HAP specie(s) that had increased emissions and the amount of the increase, together with specification as to whether the increase was from the generator source, from other source(s) at the facility, and/or from source(s) off-site;
12. For GHG credits, a statement specifying whether or not the emission reductions on which the credits are based have also been reported to Energy Information Administration in the United States Department of Energy under its program for Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385);
13. A demonstration that the emission reductions on which the DER credits are based are surplus. This shall include a showing that the emission reductions are not a result of the implementation of a regionally significant highway project or a regionally significant transit project as defined in 40 CFR 93.101;
14. For NO_x credits that are based on retired allowances allocated under the NO_x Budget Program, a copy of the Allowance Transfer Form that the Authorized Account Representative has submitted to the NO_x Allowance Tracking System Administrator

indicating that the allowances are transferred to a retirement account, as required at N.J.A.C. 7:27-31.6(a)2;

15. If the value used for “historic emissions” in the calculation of baseline emissions is the value used in an initial generation period pursuant to N.J.A.C. 7:27-30.5(h), the date the generation strategy was first implemented;
16. If the emission reduction strategy is the replacement of an existing emission source with a lower-emitting source, the date the replaced equipment or control apparatus commenced operating and date of the end of the useful life of the replaced equipment or control apparatus; and the method used to determine the source’s useful life;
17. All supporting documentation required to be submitted with the notice pursuant to the quantification protocol, which at a minimum must conform with N.J.A.C. 7:27-30.25;
18. The following statements:
 - i. The emission reductions on which the DER credits are based are real;
 - ii. The DER credits were not based on a type of emission reduction which may not, pursuant to N.J.A.C. 7:27-30.6, be used as the basis for a DER credit, or on actions prohibited under this subchapter or other provisions of law;
 - iii. All calculations relied on in the notice have been performed in accordance with N.J.A.C. 7:27-30.5 (as applicable) and with a quantification protocol that meets the requirements of N.J.A.C. 7:27-30.24 and 25; and
 - iv. All supporting documentation required to be submitted with the notice by the approved quantification protocol or under N.J.A.C. 7:27-30.25 is enclosed;
19. If pursuant to N.J.A.C. 7:27-30.27 the DER credits included in the notice were generated through the conversion of emission reductions banked under the provisions of the Emission Offset Rule at N.J.A.C. 7:27-18.8, or through the conversion of allowances allocated under the provisions of the NO_x Budget Program at N.J.A.C. 7:27-31.7, a statement indicating this;
20. For any batch of DER credits based on emission reductions due to the implementation of an energy efficiency measure, a statement as to whether or not the implementation was subsidized in whole or in part by funding derived from the societal benefits charge levied pursuant to Section 12 of Electric Discount and Energy Competition Act at N.J.S.A. 48:3-60;
21. Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and

22. The certification by the generator as required at N.J.A.C. 7:27-30.18(e).

7:27-30.8 [DER registry] Registry

(a) [A user source located in New Jersey may not use a DER for compliance unless the registry shows that the user holds the DER, that the DER is verified, that the DER has not been used previously or retired, and that neither the Department nor the EPA has found the DER to be invalid.] This section sets forth the procedures and standards for the banking of DER credits in a registry.

(b) Any submittal of a notice or a request to the registry that is required or allowed under this subchapter shall be made to the following address:

OMET Registry Operator
Mosakin International Corporation
1075 Easton Avenue
Tower 3, Suite 4
Somerset, New Jersey 08873
Attention: Emissions Trading Registry

[(b)](c) The registry includes information from the following notices (and from amendments thereto):

1. [The Notice and Certification] Notices of [DER] Generation;
2. [The Notice] Notices of Transfer;
3. [The Notice] Notices of [DER] Verification;
4. [The Notice] Notices of Intent to Use [DERs];
5. [The Notice and Certification] Notices of [DER] Use;
6. [The Notice] Notices of Credit Invalidation from the Department or the EPA pursuant to N.J.A.C. 7:27-[30.10(e) or 30.11(h)] that a DER is invalid] 30.29; and
7. [The Notice] Notices of Retirement pursuant to N.J.A.C. 7:27-[30.11(j)] 30.11.

(d) A person has not satisfied a requirement to submit a notice to the registry until the date on which the registry receives a complete notice which includes all items required under this subchapter. If the notice is sent by certified mail or by another method which provides a receipt showing the date of delivery, the date shown on the receipt is the date on which the registry shall be deemed to have received the notice. Otherwise, the date which the registry's records show as the date of receipt shall control.

- [(c)](e) [This subsection shall become operative June 2, 1997.] The operator of the registry shall process each notice or amendment it receives as follows:
1. Within one business day after receiving a notice [listed in (b) above] or amendment thereto, the operator of the registry shall determine whether the notice or amendment, contains all items required under this subchapter[.];
 2. If the notice or amendment contains all required items, then within one additional business day the operator of the registry shall update the registry to include the notice [(and, if] or amendment and perform the following, as applicable:
 - i. If the notice is a Notice [and Certification] of [DER] Generation, the operator of the registry shall assign a unique serial number to [the DERs included] each DER credit claimed in the notice and note all such serial numbers on the registry's copy of the notice[.];
 - ii. If the notice is a Notice of Verification, the operator of the registry shall designate each credit in the batch as verified or not verified pursuant N.J.A.C. 7:27-30.29;
 - iii. If the notice is an amendment of a Notice of Generation which reduces the number of credits originally claimed for the batch, the operator of the registry shall designate the withdrawn credits as canceled in accordance with N.J.A.C. 7:27-30.29;
 - iv. If the notice is an amendment of a Notice of Generation which renders prior Notice(s) of Verification invalid pursuant to N.J.A.C. 7:27-30.10(f), the operator of the registry shall remove from the registry all designations, based on the Notice(s) of Verification, that credits are verified or not verified. The Notice(s) of Verification shall remain in the registry, but the operator of the registry shall label it invalid; and
 - v. If the notice is a Notice of Invalidation submitted by the Department or EPA pursuant to N.J.A.C. 7:27-30.29(a), the operator of the registry shall, for each affected credit, place a designation in the registry that the credit is invalid; and
 3. If the notice or amendment is missing a required item, the operator of the registry shall return the notice to the person who submitted it, together with an explanation of why the notice is incomplete, and shall not update the registry to include the notice or amendment.
- [(d) A person has not satisfied a requirement to submit a notice to the registry until the date on which the registry receives a complete notice which includes all items required under this subchapter. If the notice is sent by certified mail or by another method which provides a receipt showing the date of delivery, the date shown on the receipt is the date on which the

registry shall be deemed to have received the notice. Otherwise, the date which the registry's records show as the date of receipt shall control.]

- (f) The operator of the registry shall post in the registry a copy of each complete Notice of Generation, Notice of Intent to Use, Notice of Use, and each amendment thereof, submitted electronically pursuant to N.J.A.C. 7:27-30.19(b), so that the notice or amendment may be examined and/or downloaded by any interested person.
- (g) If pursuant to N.J.A.C. 30.10(h) the Department or the EPA finds a verification defective, the operator of the registry shall remove from the registry all designations that the credits in the batch are verified or not verified.
- (h) If a credit has been used, and if the operator of the registry takes either of the following actions which affects the status of the credit, the registry operator shall within seven days of taking the action provide notification, on paper, to the user and to the Department which identifies the credit by its serial number, states the action taken, and gives the basis for the action:
 - 1. Cancellation of the credit pursuant to (e)2iii above; or
 - 2. Removal of the designation of a credit's verification pursuant to (e)2iv above.

7:27-30.9 DER credit transfer

- [(a) A person who transfers one or more DERs shall provide a complete copy of the following to the transferee at the time of the transfer:
 - 1. The Notice and Certification of DER Generation for each batch of DERs of which the transferred DERs are a part;
 - 2. All supporting documentation for the Notice and Certification of DER Generation; and
 - 3. The Notice of DER Verification, if any.
- (b) A user shall obtain a complete copy of the documentation listed in (a) above at the time a DER is transferred to the user.]
- (a) In order to effect the transfer of one or more DER credits from one holder to another, the transferor shall submit a Notice of Transfer to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.

- (b) The transferor shall provide a complete copy of the following to the transferee at the time of the transfer:
1. The Notice of Generation for each batch of DER credits of which the transferred credits are a part including any supporting documentation required pursuant to the quantification protocol or N.J.A.C. 7:27-30.25;
 2. The Notice(s) of Verification, if any, for each batch DER credits being transferred in full or in part; and
 3. Each amendment to these notices.
- (c) [When one or more DERs is transferred, the transferor and transferee shall execute a Notice of Transfer. The transferor and transferee shall complete the] A Notice of Transfer [on a form obtained from the registry, including information] shall include the following:
1. Information to identify the transferor[,] and the transferee[, the DERs, and the purchase price. The transferee shall submit the Notice of Transfer to the registry.];
 2. The serial numbers assigned to each DER credit being transferred;
 3. The average per-credit purchase price paid by the transferee to the transferor. This price shall be based on the full cost of the transaction, including but not limited to the amount paid for the credits and any associated service fees;
 4. A statement that the (named)transferor has provided the documents listed in (b) above to the (named) transferee; and
 5. Certification by both the transferor and transferee as required under N.J.A.C. 7:27-30.18(e).
- (d) No DER credit shall be transferred if the credit has been used or retired, or if it has been canceled or designated as invalid pursuant to N.J.A.C. 7:27-30.29.

7:27-30.10 DER credit verification

- [(a) Only the following persons may verify DERs that are to be used in New Jersey:
1. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8; or
 2. A certified public accountant certified by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B.]

- (a) A DER credit to be used in New Jersey shall be considered to be verified only if:
1. The credit is in the set of NO_x credits verified by the Department on April 25, 1995;
 2. The credit is in a batch verified by one of the following persons:
 - i. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8; or
 - ii. A certified public accountant licensed by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B; or
 3. The credit has been verified by the air pollution control agency of another state or in accordance with the verification procedures of the other state, provided that:
 - i. The credit was generated in the other state; and
 - ii. The Department has entered into an interstate agreement with the air pollution control agency of the other state which expressly allows credit verifications performed under the auspices of the other state to be recognized in New Jersey.
- (b) A verifier shall be independent of the generator. A verifier shall not be considered independent if [he or she]:
1. [Is] The verifier is employed by the generator, or was employed by the generator within the six months before the verification; [or]
 2. [Is] The verifier is employed by an entity that prepared the Notice [and Certification] of [DER] Generation or any of its supporting documentation for the batch of [DERs] DER credits being verified, assisted the generator in such preparation, or otherwise assisted the generator in connection with the generation of the batch of [DERs] DER credits being verified;
 3. The generator is owned, in whole or part, or is subject to control or direction, by the verifier or the verifier's employer; or
 4. The employer of the verifier is owned, in whole or part, or is subject to control or direction, by the generator.
- (c) In performing a verification, a verifier shall consider all the DER credits included in the batch covered by a Notice of Generation. A verifier can verify a DER [can be verified] credit only if the verifier [determines that] makes all of the following [apply] findings, based on diligent inquiry that is not limited to reliance upon representations made by the generator:

- [1. The DER is not based on an emission reduction which cannot be the basis for generation of a DER pursuant to N.J.A.C. 7:27-30.6;
 2. The generator used an emission quantification protocol that applies to the emission reductions generated and satisfies the requirements of N.J.A.C. 7:27-30.20;]
 - [3.]1. The Notice [and Certification] of [DER] Generation [, and all supporting documentation, contains], together with any amendment thereto, includes all of the information, statements, supporting documentation, and certification required under this subchapter and the applicable [emission] quantification protocol;
 - [4.]2. The Notice [and Certification] of [DER] Generation, together with any amendment thereto, and including all statements made therein and all the supporting documentation, [does not appear on its face to omit any information necessary to make it] is true, accurate and complete;
 - [5.]3. The [supporting documentation establishes that all calculations] notice, together with any amendment thereto, documents that all calculations relied on in the notice were performed as required under [this subchapter] N.J.A.C. 7:27-30.5 and [the emission] a quantification protocol which meets the requirements of N.J.A.C. 7:27-30.24 and 25; and
 - [6.]4. The [supporting documentation] notice, together with any amendment thereto, establishes that [DERs] the DER credits are based on emission reductions which are real and surplus, and which satisfy all other applicable requirements of this subchapter for the generation of [DERs] DER credits.
- (d) After [verifying] making a determination as to whether some or all of the [DERs] DER credits in the batch can be verified, the verifier shall submit a complete [a] Notice of [DER] Verification [on a form provided by the registry. The verifier shall submit the Notice to the person who holds the DERs and] to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. [In the Notice, the verifier shall include the following:
1. Information identifying the verifier and the verifier's employer;
 2. The unique serial numbers assigned to each DER verified;
 3. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above;
 4. A statement that the DERs are verified; and
 5. The certification required under N.J.A.C. 7:27-1.39.

- (e) If the Department or the EPA determines at any time that a DER in the registry does not satisfy all of the requirements of (c) above, the Department or the EPA (as applicable) shall notify the registry and the generator that the DER is invalid.]

(e) A Notice of Verification shall include the following:

1. The name, address, and other pertinent identifying information for:
 - i. The verifier, including the number of the verifier's New Jersey professional engineer or certified public accountant license;
 - ii. The verifier's employer; and
 - iii. The person for whom the verifier is performing the verification;
2. The serial number assigned to each DER credit in the batch;
3. Specification of whether all the credits in the batch are verified, part of the batch is verified, or none of the batch is verified; if the verifier has determined that he or she is able to verify only part of the batch, specification of the number of credits verified, together with an explanation of why all the credits cannot be verified;
4. The following statements:
 - i. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above; and
 - ii. A statement attesting that the verifier is, in accordance with (d) above, independent of the generator;
5. Disclosure of whether or not the verifier or the verifier's employer is a holder of any credits in the batch;
6. A detailed description of any fiduciary relationship(s) (current, prospective, or which have existed in the previous five years) between the verifier, and also the verifier's employer, and the following:
 - i. The person for whom the verifier is performing the verification;
 - ii. The generator; and
 - iii. The holder of any credit in the batch; and
7. The certification by the verifier as required under N.J.A.C. 7:27-30.18(e).

- (f) A credit shall not be considered to be verified, if the Notice of Verification that applies to the credit is no longer valid. No Notice of Verification is valid if, subsequent to the verifier's submission of the Notice of Verification to the registry, an amendment to the Notice of Generation is submitted to the registry which substantively changes any of the information on which the verification was based, including but not limited to changes to any of the following:
 - 1. The number of DER credits which have been generated;
 - 2. The method used to calculate the number of DER credits generated; or
 - 3. The data or other information on which the calculation is based.
- (g) Any person may have a batch of DER credits verified, even if the batch has already been verified. Therefore, the registry may reflect more than one Notice of Verification for a single batch of DERs.
- (h) If the Department or the EPA determines that a verification is defective, the Department or the EPA will notify the operator of the registry, the verifier, and any person who has used a credit in the batch of its finding.

7:27-30.11 Voluntary Retirement of DER credits

- (a) A holder of a DER credit may voluntarily retire that credit by submitting a Notice of Retirement to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.
- (b) A Notice of Retirement shall include the following:
 - 1. Information to identify the holder who is retiring the credit(s);
 - 2. The serial number assigned to each DER credit being voluntarily retired; and
 - 3. The certification by the holder who is retiring the credits as required pursuant to N.J.A.C. 7:27-30.18(e).
- (c) DER credits which are being voluntarily retired under this section do not need to be verified prior to being retired.
- (d) A person who submits a Notice of Retirement may subsequently amend the notice pursuant to N.J.A.C. 7:27-30.20 to correct an error in the notice.
- (e) When DER credits are being used pursuant to N.J.A.C. 7:27-30.12, a Notice of Retirement shall not be submitted for the retirement of 10 percent of the credits being used(or, if the use

is a “permit insurance” use pursuant to N.J.A.C. 7:27-30.14(d) and (e), 20 percent of the credits being used) for the benefit of the environment. Such retirement is an integral part of the use and is covered in the Notice of Use.

- (f) No person may transfer or use a DER credit that has been retired, and no person may withdraw a Notice of Retirement.

7:27-[30.11]30.12 [DER] VOC and NO_x credit use: general requirements

- (a) [A user shall use only DERs which satisfy the requirements of N.J.A.C. 7:27-30.8(a).] A DER credit, based on reductions of VOC or NO_x emissions, may be used for compliance under this section.
- (b) A VOC or NO_x credit shall be considered a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and rules promulgated thereunder. However, nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit such authorization.
- (c) A user may use a credit for compliance only if the registry shows that the user holds the credit, that the DER credit is verified, that the credit has not been used previously or retired, that the credit that has not been cancelled pursuant to N.J.A.C. 7:27-30.29(b), and that the credit has not been found by to be invalid by either the Department or the EPA.
- [(b)](d) A user shall not use a [DER based on NO_x emission reductions] NO_x credit to comply with a VOC requirement, and shall not use a [DER based on VOC emission reductions] VOC credit to comply with a NO_x requirement.
- [(c)](e) A user shall not use a [DER] VOC or NO_x credit based on emission reductions that occurred outside the ozone season to comply with any requirement during the ozone season.
- [(d)](f) A use period shall not exceed one year. However, [DERs may be used] a given use may be continued over consecutive use periods, provided that the notice requirements set forth at N.J.A.C. 7:27-30.15 and 16 are met for each use period.
- (e) At least 30 days before using a DER, the user shall give notice of the intended use to the registry. The notice shall be in the form of a Notice of Intent to Use DERs, or an amendment to a previously submitted Notice of Intent to Use DERs. If the notice is late, then the number of DERs required for compliance from the beginning of the use period described in the notice (or amended notice) until the full 30 days has elapsed shall be multiplied by 1.5. The use period or amended use period (as applicable) shall not begin before the notice is filed.]

- (g) Except in a case where the use is exempted from the requirement for a Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15(e), a use period shall not begin until a complete Notice of Intent to Use has been submitted to the registry in accordance with N.J.A.C. 7:27-30.15 and 19. Additionally, if the user source is:
1. Located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge, the use period shall not begin until 30 days after the user submits a copy of the Notice of Intent to Use to the federal Land Manager, pursuant to N.J.A.C. 7:27-30.19(j); and
 2. Permitted under N.J.A.C. 7:27-8 or 22, and the use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any “permit insurance” use listed at N.J.A.C. 7:27-30.14(d) use), the use period shall not begin until seven days after the Notice of Intent to Use has been submitted to the Department as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.3(k) or 22.22(d).
- (h) Whenever credits are used, the user shall retire 10 percent of the total number of the credits used for the benefit of the environment, unless the use is a “permit insurance” use pursuant to N.J.A.C. 7:27-30.14(d) and (e), in which case the user shall retire 20 percent of the total number of the credits used for the benefit of the environment. In determining the number of credits needed for a use, the credits required to be retired are additional to the credits otherwise required for the use.
- [(f)](i) The user shall hold DER credits as follows:
1. For the following uses, the user shall hold the full quantity of [DERs] DER credits needed for compliance [before using them, and shall continue to hold all such DERs until filing the Notice and Certification of DER Use. If the user fails to do so, then the number of DERs needed for compliance for each day that the shortfall continues shall be multiplied by three.] during the use period by the day the Notice of Intent to Use is submitted to the registry:
 - i. A “permit insurance” use pursuant to N.J.A.C. 7:27-30.14(d) and (e); and
 - ii. A use which compensates for the increase in allowable emissions, if a permit limit is revised to become less stringent pursuant to N.J.A.C. 7:27-30.14(a)5;
 2. For a use of DER credits to meet emission offset requirements, the user shall hold DER credits as required pursuant to N.J.A.C. 7:27-30.14(g);
 3. For a use for which no Notice of Intent to Use is required, pursuant to N.J.A.C. 7:27-30.15(e), the user shall hold the full quantity of DER credits required for compliance by the day the Notice of Use is submitted to the registry;
 4. For any other use, the user shall hold the credits needed for compliance (including any credits required pursuant to N.J.A.C. 7:27-30.13(d)2, 3 and 4ii, iii, and iv) on any

given date within the use period by the day before that date, except as provided at (i)5 below;

5. If on any day within the use period the number of credits held by the user for the use is less than the number required to be held under (i)4 above, the number of DER credits needed for compliance for each day the shortfall occurs shall be tripled;
 6. Once a user holds a DER credit pursuant to (i)1 through 5 above, the user shall continue to hold the DER credits until the Notice of Use is filed; and
 7. In all cases the user is required to hold all DER credits needed for the use at the time the Notice of Use is submitted.
- [(g) For each day on which the multipliers in both (e) and (f) above apply, the number of DERs needed for compliance shall be multiplied by 4.5.
- (h) If the Department determines that the DERs that a user intends to use or has used are invalid, the Department shall so notify the user and the registry. Within 60 days after receiving the notice, the user shall become the holder of other DERs to replace the invalid DERs and shall amend the Notice of Intent to Use DERs or Notice and Certification of DER Use to reflect the replacement DERs.]
- (j) If any DER credit being held for a use pursuant to (i) above subsequently proves not to be needed for the use, the user may, after the Notice of Use is submitted, trade, voluntarily retire, or use these credits for other purposes allowed under this subchapter.
- (k) If a user has used a DER credit that is designated as invalid pursuant to N.J.A.C. 7:27-30.29(a) or cancelled pursuant to N.J.A.C. 7:27-30.29(b), the user shall within 60 days after receiving notice of the invalidation or cancellation submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a valid credit, identified by its serial number.
- (l) If the verification of a DER credit that a user has used is rendered invalid pursuant to N.J.A.C. 7:27-30.10(f) or (h), the user shall within 60 days after receiving notice of the invalidation of the verification:
1. Ensure that a new Notice of Verification is submitted to the registry which verifies the original DER credit; or
 2. Submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a verified credit, identified by its serial number.
- [(i)](m) The Department may request an interim calculation [(pursuant to N.J.A.C. 7:27-30.12) of the quantity of DERs needed for compliance] to determine whether the user source's use of credits, as of any date during the use period, has exceeded the

maximum number of credits, as set forth by the user in the Notice of Intent to Use.
The user shall submit the interim calculation to the Department within 15 days after receiving the Department's request.

- [(j)] A person may retire one or more DERs. To retire a DER, the person who holds the DERs shall execute a Notice of Retirement and submit it to the registry. The holder shall complete the Notice of Retirement on a form provided by the registry, including information to identify the DERs and the holder. A person who retires a DER is not required to submit a Notice of Intent to Use DERs or Notice and Certification of DER Use for that DER.]
- [(n)] Any person who submits a Notice of Intent to Use to the registry shall, after the use period, submit a Notice of Use, in accordance with N.J.A.C. 7:27-30.16, even if the person determines that no credits were used during the use period.
- [(o)] If a permittee wants more flexibility, with respect to applicable permit limits, than is allowed under the "permit insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e), then the permittee may apply to the Department for approval of a 15-year plan for the permittee's facility, pursuant to N.J.S.A. 26:2C-9.2c(3).
- [(k)] The user may be subject to penalties for violation of the emission limit for which DERs were to be used for compliance, if the user:
 1. Purports to use DERs which do not satisfy the requirements of N.J.A.C. 7:27-30.8(a), or for purposes prohibited under (b) or (c) above;
 2. Fails to submit the Notice of Intent to Use DERs before the use period [was to begin, or fails to submit an amendment to the notice before the amended use was to begin;
 3. Fails to hold the full quantity of DERs required for compliance by the date on which the Notice and Certification of DER Use is due under N.J.A.C. 7:27-30.15; or
 4. Fails to replace invalid DERs as required under (h) above.]

7:27-~~[30.12]~~30.13 [DER] VOC and NO_x credit use: computation of [DERs] DER credits

- (a) [The quantity of DERs needed for compliance shall be calculated] A user shall calculate the following in accordance with this section and [an emission] a quantification protocol that [conforms with] satisfies the requirements of N.J.A.C. [7:27-30.20] 7:27-30.24 and 25:
 1. If the user is required to hold the full number of DER credits needed for compliance when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the number of credits that need to be held; and
 2. The number of DER credits that were used during a use period.

- [(b) The quantity of DERs needed for compliance is the difference between the user source's actual emissions and its baseline emissions, adjusted to retire 10 percent of such DERs for the benefit of the environment. The following formula describes the calculation:

$$\text{DERs} = \frac{(\text{Actual Emissions} - \text{Baseline Emissions})}{0.9}$$

where:

1. DERs is the quantity of discrete emission reductions needed for compliance, rounded to the next highest twentieth of a ton of VOC or NO_x;
2. Actual emissions are the total mass emissions of VOC or NO_x (as applicable) that the user source actually emitted during the use period. Actual emissions are expressed as units of mass (pounds or tons) of VOC or emitted during the use period;
3. Baseline emissions are the total mass emission of VOC or NO_x (as applicable) that the user source would have emitted during the use period, if the user source's emissions rate had been at the lowest allowable emission rate applicable during the use period, minus a design margin. Baseline emissions are expressed as units of mass (pounds or tons) of VOC or NO_x emitted during the use period; and
4. Division by 0.9 ensures that 10 percent of the DERs needed for compliance are retired at the time of use.]

- (b) The number of DER credits that need to be held pursuant to N.J.A.C. 7:27-30.12(i)1 when a Notice of Intent to Use is submitted shall be determined as follows:

1. Determine the maximum quantity of excess VOC or NO_x emissions from the user source, expressed in pounds, that may occur during the use period. The maximum quantity of excess emissions shall be 100 percent of the increase in allowed emissions (above the permit limit in the current permit) of the equipment or control apparatus during the use period. This shall be determined in accordance with the following formula:

$$EE = (CR - PL)(T)$$

where:

EE = the maximum quantity of excess emissions which may be released during the use period, expressed in pounds of VOC or NO_x;

PL = the permit limit which establishes the rate which is (in the absence of the use of credits) the maximum allowable emission rate for the user

source, expressed in emissions per unit time. If the limit in the permit is given in emissions per unit of time, the units used for this rate shall be the same as are used in the permit; otherwise, the limit in the permit shall be converted to and expressed as pounds per hour;

CR = the “ceiling rate,” that is the maximum emission rate, specified by the user in the Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.14(d)1ii allowed during the use period, expressed in the same units as used above for the permit limit;

T = the amount of time in the use period, expressed in the same units for time as are used to express the permit limit and the ceiling rate; and

iii. For any other use, the maximum quantity of excess emissions shall be the maximum emission increase specified by the user in the Notice of Intent to Use;

2. If the use of VOC or NO_x DER credits for compliance may result in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those potential VOC or NO_x emission increases to the quantity of emission increases established under 1 above;

3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (b)1 and 2 above to the number of DER credits that need to be held when a Notice of Intent to Use is submitted as follows:

i. Divide the quantity of emission increases calculated under (b)1 and 2 above, expressed in pounds, by 100;

ii. If the user will submit the complete Notice of Intent to Use late, increase the quantity calculated under (b)3i above for such lateness in accordance with N.J.A.C. 7:27-30.15(b)3iii;

iii. If the user fails to hold the full number of DER credits needed for compliance by the day the Notice of Intent to Use is submitted, increase the quantity calculated under (b)3i and ii above for such failure in accordance with N.J.A.C. 7:27-30.12(i)3;

iv. In order to ensure that the requirement to retire 10 percent of the total number of credits being used (or, if the use is a “permit insurance” use pursuant to N.J.A.C. 7:27-30.14(d) and (e), 20 percent of the total number of credits used) for the benefit of the environment pursuant to N.J.A.C. 7:27-30.12(h) is met, divide the result obtained under (b)3i through iii above by the following:

- (1) If the use is a “permit insurance” use, by 0.8; and
 - (2) Otherwise, by 0.9; and
- v. If the result obtained under (b)3iv above is a whole number, that is the number of DER credits that need to be held when a Notice of Intent to Use is submitted; otherwise round the result up to the next highest whole number to determine the number of DER credits that need to be held.
- (c) The number of DER credits that were used during a use period shall be determined as follows:
 - 1. For uses subject to N.J.A.C. 7:27-30.12(i)1, where the full number of credits needed for compliance is to be held when the Notice of Intent to Use is submitted, the number of credits shall be determined in accordance with (b) above;
 - 2. Otherwise, the number shall be determined in accordance with (d) below.
- (d) Pursuant to (c)2 above, the number of DER credits that were used during a use period shall be determined as follows:
 - 1. Determine the quantity of emission increases which need to be compensated for with credits as follows:
 - i. For use of credits to meet emission offset requirements under N.J.A.C. 7:27-30.14(g), the quantity shall be an amount that is equal, in emissions value, to the emission offset requirement established in the permit pursuant to N.J.A.C. 7:27-18.3(d);
 - ii. For use of credits for a delay of testing under N.J.A.C. 7:27-30.14(a)6ii, where the permittee has not provided a waiver pursuant to N.J.A.C. 7:27-8.28(b) or 22.18(l), the quantity shall be 100 percent of the allowable emissions of the equipment and/or control apparatus during the calendar quarters identified pursuant to N.J.A.C. 7:27-30.14(a)6ii(1). This quantity shall be determined assuming that the emissions equal the maximum allowed under the permit and that the activity level and/or hours of operation are also the maximum allowed;
 - iii. For use of credits to compensate for excess NO_x emissions during a MEG alert pursuant to N.J.A.C. 7:27-30.14(b)1, the quantity shall be determined pursuant to N.J.A.C. 7:27-19.24(b) and (c); and
 - iv. Otherwise, the quantity shall be determined by calculating the difference between the user source's actual emissions and its baseline emissions, for each

interval within the use period where this difference is positive and then summing these differences. The following formula describes the calculation:

$$EI = \sum_1 [(Actual Emissions) - (Baseline Emissions)]$$

where:

EI = the emission increases which need to be compensated for with credits, expressed in pounds of VOC or NO_x;

I = The number of intervals within the use period, where an interval is an extent of time, within a use period, throughout which the user source's actual emissions exceed its baseline emissions. (In a case where actual emissions continuously exceed baseline emissions throughout the use period there shall be only one interval within the use period);

Actual Emissions = for a given interval, the quantity of emissions that the user source actually emitted during the interval, expressed in pounds of VOC or NO_x;

Baseline Emissions = for a given interval, the quantity of emissions determined in accordance with (e) below, expressed in pounds of VOC or NO_x;

2. If the use of VOC or NO_x DER credits resulted in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those actual VOC or NO_x emission increases to the quantity of emission increases established under (d)1 above; and
3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (d)1 and 2 above to the number of DER credits needed for compliance as follows:
 - i. Divide the quantity of emission increases calculated under (d)1 and 2 above, expressed in pounds, by 100;
 - ii. If the user submitted a complete Notice of Intent to Use to the registry late, increase the quantity calculated under (d)3i above for such lateness in accordance with N.J.A.C. 7:27-30.15(b)3iii;
 - iii. If the user failed to hold the full number of DER credits needed for compliance by the day such holding is required pursuant to N.J.A.C. 7:27-30.12(i), for each day during the use period that the shortfall continued, triple the quantity calculated under (d)3i and ii above for such lateness in accordance with N.J.A.C. 7:27-30.12(i)3;

- iv. If the use is a Class 3 “permit insurance” use, multiply the quantity calculated under (d)3i through iii above by 1.5 in accordance with N.J.A.C. 7:27-30.14(e)3;
- v. In order to ensure that the requirement to retire 10 percent of the total number of credits used for the benefit of the environment pursuant to N.J.A.C. 7:27-30.12(h) is met, divide the result obtained under (d)3i, ii, iii, and iv above by 0.9; and
- vi. If the result obtained under (d)4v above is a whole number, that is the number of DER credits needed for compliance; otherwise round the result up to the next highest whole number to determine the number of DER credits that were used during a use period.

(e) The quantity of baseline emissions shall be determined as follows:

- 1. Baseline emissions shall be zero for the additional hours of operation, if the use entails increasing the user source’s hours of operation beyond the maximum hours of operation specified in a permit; and
- 2. Otherwise baseline emissions shall be the emissions that the user source would have emitted if:
 - i. The user source's emissions rate equals the lowest allowable emission rate applicable during the use period, minus a design margin; and
 - ii. The user source's activity level and hours of operation are the lower of the following:
 - (1) The design capacity of the emission source; or
 - (2) If applicable, the maximum allowed under its permit.

(f) If part of the use period falls within the ozone season and part outside the ozone season, a user shall perform the calculations in (b) and (c) above separately for these two portions of the use period.

7:27-[30.13]30.14 [DER] VOC and NO_x credit use: required, authorized and prohibited uses

(a) The owner or operator of an emissions source shall use [DERs]VOC or NO_x credits for compliance if such use is required under another provision of this chapter. [Examples of required DER] Required uses of DER credits include:

1. Pursuant to N.J.A.C. 7:27-16.17(m), compensation for excess VOC emissions authorized under an alternative VOC control plan [approved] submitted to the Department for approval after August 2, 1996;
2. Pursuant to N.J.A.C. 7:27-19.13(i), compensation for excess NO_x emissions authorized under an alternative maximum allowable emission rate [approved] submitted to the Department for approval after August 2, 1996;
3. Pursuant to N.J.A.C. 7:27-19.23, compensation for any emissions attributable to the difference between the rate of NO_x emissions established as a limit which is to be attained under an innovative control technology plan [(as stated in] approved pursuant to N.J.A.C. [7:27-19.3(c)3)] 7:27-19.23, and the actual rate of NO_x emissions after the date set pursuant to N.J.A.C. 7:27-19.23(c)2v on which the innovative control technology is required to be [implemented (as stated in N.J.A.C. 7:27-19.3(c)5v); and] constructed and/or installed and full compliance attained;
4. Pursuant to N.J.A.C. 7:27-19.24(c), compensation for [excess] NO_x emissions [authorized] from an electric generating unit during a MEG alert[.] that exceed the applicable permit limit;
5. Pursuant to N.J.A.C. 7:27-8.4(r) or 22.3(uu), compensation for the increase in allowable emissions from equipment and/or control apparatus resulting from the replacement of the BACT or LAER limit in the permit with a less stringent limit, or the replacement with a less stringent limit of any limit in an approved permit to reflect that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a); and
6. Pursuant to N.J.A.C. 7:27-8.3(l) or 22.3(vv), in addition to any penalties which may apply, compensation for a failure to perform timely testing of the VOC and/or NO_x emissions of equipment or control apparatus. This paragraph shall apply in cases where testing required by a date established pursuant to N.J.A.C. 7:27.8 or 22 and/or the applicable permit, or pursuant to a written request by the Department pursuant to N.J.A.C. 7:27-8.4(f) or 8.7(f) is not performed by a date that is 90 days after the date by which the testing is required to be performed. Determination of the amount of compensation shall be based on the following:
 - i. If the permittee has requested and obtained approval of the Department for a delay in testing pursuant to N.J.A.C. 7:27-8.28(a) or 22.18(k), if the permittee has waived its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken) pursuant to N.J.A.C. 7:27-8.28(b) or 22.18(l), and if the testing is performed on the original equipment or control apparatus (not on

replacement or reconstructed equipment or control apparatus which is subsequently installed), the following apply:

- (1) The permittee shall record the hours of operation of the equipment or control apparatus from the date the testing was originally required to be performed until the date the testing is completed, and shall make such records available to the Department upon request;
- (2) The use period shall determined as follows:
 - (A) If the emission source is a new or modified source, the use period shall begin on the date the new or modified source commenced operating; otherwise, the use period shall begin on the date by which the testing was required to be performed; and
 - (B) The use period shall end on the earlier of the following: the date that the testing is completed, or the date which is the last day of the one year period which begins the first day of the use period;
- (3) The determination of the source's actual emissions shall be based on the result obtained from the testing, whenever the testing is completed; and
- (4) The compensation shall be for emissions in excess of the applicable permit limit, and the quantity of emission increases which need to be compensated for with credits shall be calculated pursuant to N.J.A.C. 7:27-30.13(d)iv;

ii. Otherwise, the following apply:

- (1) The permittee shall determine which calendar quarters fall, in whole or in part, in the period defined as follows:
 - (A) The first day of the period is the day that is 90 days after the day by which the testing was required to be performed; and
 - (B) The last day of the period is the earlier of the following: the date that the testing is completed or the date that is one year and 90 days after the day by which the testing was required to be performed;

- (2) The use period shall begin on the first day of the first quarter determined pursuant to (a)6ii(1) above and shall end on the date that the testing is completed; and
 - (3) The compensation shall be for the source's allowable emissions, in full, for all of the quarters determined pursuant to (a)6ii(1) above, and the quantity of emission increases which need to be compensated for with credits shall be calculated pursuant to N.J.A.C. 7:27-30.13(d)ii; but
 - iii. Notwithstanding (a)6i and ii above, no compensation is required if the delay is at the request of the Department; and
- 7. Pursuant to N.J.A.C. 7:27-8.3(l) or 22.3(vv), in addition to any penalties which may apply, compensation for an exceedance of a permit limit which results from operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit, or if the control apparatus serving the equipment has broken down or is dysfunctional.
- (b) The person may use DER credits in full or partial settlement of a monetary penalty pursuant to N.J.A.C. 7:27A-3.
- [(b)](c) A person may use [DERs] VOC or NO_x credits to comply with an emission limit established under this chapter, unless the use is prohibited by [Federal] federal or State law or is [listed under (d)] prohibited pursuant to (h) or (i) below. Examples of authorized [DER] uses include:
 - 1. - 2. (No change.)
 - 3. Compliance with a VOC content requirement for an architectural coating or for a consumer or commercial product pursuant to N.J.A.C. 7:27-23 or 24; however use of DER credits does not relieve a person from responsibility for complying with the federal architectural coating requirements at 40 CFR Part 59, Subpart D;
 - [3.]4. Compliance with any VOC or NO_x emissions limit established in a rule which becomes operative on or after August 2, 1996, unless the use of [DERs] DER credits for such purpose is expressly prohibited;
 - [4.]5. Compliance with emission offset requirements under N.J.A.C. 7:27-18, in accordance with [(c)](g) below; and
 - [5. Compliance with requirements, if any, for emission reductions in connection with the employer trip reduction program administered under N.J.A.C. 16:50, if consistent with rules promulgated by the State Department of Transportation. However, DERs

may not be used in lieu of submitting the compliance plan required under N.J.A.C. 16:50.]

6. For municipal waste combustors subject to 40 CFR Part 60, Subpart Cb, compliance with the NO_x requirements established pursuant to that subpart. (This does not apply however to a Standard of Performance for New Stationary Sources (commonly referred to as a New Source Performance Standard or NSPS) established under 42 U.S.C. §7411.)
- (d) Notwithstanding any provision of N.J.A.C. 7:27-8 or 22 to the contrary, a permittee may use VOC or NO_x credits for “permit insurance” to comply with a permit limit. However no permittee may implement a permit insurance use, unless the use belongs to one of the classes of “permit insurance” uses listed in (e) below and the following conditions are met:
1. In the Notice of Intent to Use, in addition to meeting the requirements for such a notice at N.J.A.C. 7:27-30.15, the user shall include the following:
 - i. Specify the length of the use period to be one, two, three, or four calendar quarters;
 - ii. Specify the maximum VOC or NO_x emission rate (i.e., the “ceiling rate”) for the user source during the use period, given in emissions per unit time. This rate shall be an enforceable limit which may not be exceeded during the use period. For a Class 2 permit insurance use as described at (e)2 below, the ceiling rate shall not exceed the corresponding permit limit proposed in the pending permit application; and
 - iii. Include the statements required pursuant to N.J.A.C. 7:27-30.15(d)13;
 2. The Notice of Intent to Use is submitted as seven-day-notice, in accordance with N.J.A.C. 7:27-30.19(h);
 3. More than one “permit insurance” use may be implemented concurrently at a facility; however the resulting increase at the facility in actual emissions shall not exceed 5 tons of VOC or 10 tons of NO_x for all “permit insurance” uses combined, as determined for any 12 month period;
 4. The use period for a Class 3 permit insurance use shall at a maximum be one year from the date the initial use period begins. The duration of a Class 1 or Class 2 permit insurance use shall also be limited to a maximum of one year unless:
 - i. One of the following apply:
 - (1) The permittee has obtained a permit modification or revision which addresses the original reason permit insurance was needed, and the

subsequent use goes beyond the original purpose (i.e., entails a higher ceiling rate, a higher activity level, or more hours of operation); or

(2) The subsequent use is for a different purpose; or

ii. The maximum emission rate (i.e., the “ceiling rate”) specified in the Notice of Intent to Use pursuant to (d)1ii above for the subsequent use is less than the rate at which an exceedance of the lowest allowable rate of emissions of VOC and/or NO_x, as applicable, for the equipment or control apparatus would be defined as a high priority violation, pursuant to EPA’s “Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)” guidance document;

5. The number of DER credits used for compliance is the number of credits that is required to be held when the Notice of Intent to Use is submitted. This is the number determined pursuant to N.J.A.C. 7:27-30.13(b);

6. The use will not result in:

i. Emissions of an air contaminant not authorized to be emitted under the existing (approved) permit; and

ii. Actual emissions of any air contaminant, other than the air contaminant (VOC or NO_x) emissions which is being compensated for with credits, at a level which exceeds a limit in the permit for that air contaminant; and

7. The use is not one of the uses prohibited pursuant to (h) or (i) below.

(e) The classes of “permit insurance” uses are as follows:

1. A Class 1 “permit insurance” use applies in cases where actual emissions from existing equipment or control apparatus may exceed a permit limit due to a change in operation, including but not limited to the use of a new raw material or the increase in the source’s activity level. A use shall belong to this class only if:

i. The permittee has not made any physical change to the equipment or control apparatus for which a permit modification or revision is required; and

ii. One of the following apply at the time the Notice of Intent to Use is submitted:

(1) The permittee has not submitted a permit application to the Department for the change in operation; or

- (2) The permittee has submitted a permit application for the change in operation, but the Department has not yet acted upon (approved or disapproved) the application;
2. A Class 2 “permit insurance” use applies in cases where a permittee has submitted a permit application for a physical change to existing equipment or control apparatus and has constructed and/or installed the change, but the Department has not yet approved or disapproved the application; therefore there is no approved permit limit which applies. Class 2 “permit insurance” allows a permittee to operate the equipment or control apparatus prior to the Department issuing the revised permit. A user may use Class 2 “permit insurance” only if the user understands and agrees that if during the use period the user source’s actual VOC and/or NO_x emission rate exceeds the limit included in the revised permit, as eventually approved by the Department, the permittee shall be considered to have violated the limit and may be subject to penalties under N.J.A.C. 7:27A-3; and
3. A Class 3 “permit insurance” use applies in cases where testing shows that new or modified equipment or control apparatus has failed to meet an emission limit in its permit. Class 3 “permit insurance” allows a permittee to operate the equipment or control apparatus, even though the actual VOC or NO_x emissions from the equipment or control apparatus may exceed a limit (including but not limited to a BACT or LAER limit, or a limit which reflects that the equipment or control apparatus incorporates advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a)). A credit surcharge of 1.5:1.0 is applicable to a Class 3 “permit insurance” use pursuant to N.J.A.C. 7:27-30.13(d)3iv, in lieu of the emission source being subject to additional penalties for operating after the testing failure. A use shall belong to this class only if:
- i. The new or modified equipment or control apparatus has been properly constructed and/or installed;
 - ii. The new or modified equipment or control apparatus is being properly operated and maintained; and
 - iii. The permittee is expeditiously taking all reasonable steps needed to remedy any discrepancy between the permit limit and the actual emissions from the equipment or control apparatus.
- (f) The person may use DER credits as part of an affirmative defense demonstration to show that the person has taken all reasonable steps to minimize emissions.
- [(c)](g) A person may use [DERs] VOC or NO_x credits to comply with the emission offset requirements of N.J.A.C. 7:27-18. However,[if] no person shall use credits to meet emission offset requirements unless all of the following requirements are satisfied:

1. The generation and use of the [DERs complies with] DER credits meets all applicable requirements of 42 U.S.C. §7503, 40 CFR §51.165(a), N.J.A.C. 7:27-18, and this subchapter [(except for the requirements of this subchapter specifically made inapplicable under 4 and 5 below)], except as follows:
 - i. The permittee is not required to include in the emission offset demonstration submitted with the permit application a representation that the emission reductions on which the DER credits are based are permanent, notwithstanding N.J.A.C. 7:27-18.3(e);
 - ii. The permittee is not required to hold the DER credits prior to using them, notwithstanding N.J.A.C. 7:27-30.12(i);
 - iii. The permittee is not required to have the DER credits verified prior to using them, notwithstanding N.J.A.C. 7:27-30.12(c); and
 - iv. The permittee is not required to submit a complete Notice of Use within 30 days after the end of each use period, notwithstanding N.J.A.C. 7:27-30.16(a);
2. The use is proposed in the permit application submitted pursuant to N.J.A.C. 7:27-18 and 22, and in addition to meeting the requirements at N.J.A.C. 7:27-18(e) the permit application shall include the following:
 - i. A draft initial Notice of Intent to Use is included in the permit application, which includes the quantification protocols both for the generation of the DER credits proposed to be used and for the proposed use; and
 - ii. A demonstration that the permit applicant will be able, by relying on a series of consecutive temporary reductions, to obtain sufficient DER credits to satisfy the need for credits for the shorter of the following periods:
 - (1) The period that the user proposes to use DER credits to meet emission offset requirements; or
 - (2) The period that extends until the applicable primary standard attainment date established under 42 U.S.C. §7511(a); and
3. In the permit issued pursuant to N.J.A.C. 7:27-22 and 18, the Department has approved the use of DER credits to comply with the emission offset requirements, and the approved permit includes the following as enforceable conditions:
 - [2.]i. The [DERs are] DER credits shall be generated [at the same time] during the use period in which they are used [(and accordingly, the user is not required to hold the DERs before the use period begins);

- [3.]ii. [Before each use period begins, the user submits to the Department] Each year, the permittee shall submit a Notice of Intent to Use prior to the beginning of the use period, in accordance with N.J.A.C. 7:27-30.15. The notice shall include a legally binding commitment from one or more DER credit generators to generate the [needed DERs] DER credits needed by the permittee for the upcoming use period and [convey] to transfer those [DERs] DER credits to the user prior to the date the user's Notice of Use is due;
- [4. In lieu of submitting a Notice of Intent to Use DERs, the user submits the emission offset demonstration required under N.J.A.C. 7:27-18.3(e). In the demonstration the user shall establish that the user is able to obtain sufficient DERs for the shorter of the following periods: the period that the user proposes to use DERs as emission offsets; or the period that extends until the applicable primary standard attainment date established under 42 U.S.C. §7511(a). In the demonstration, the user is not required to establish that the emission reductions on which the DERs are based are permanent, if DERs based on a series of consecutive temporary reductions will cover this entire period. The user shall submit the demonstration to the address listed in N.J.A.C. 7:27-18.8(a);
5. The user enters into an enforceable commitment to continue to obtain the DERs for the life of the equipment or until emission reductions which meet the standards for creditable emission reductions at N.J.A.C. 7:27-18.5 are secured for use as emission offsets;
6. In lieu of having the DERs verified before use, the user has the DERs used in each year verified before April 30 of the following year. If the quantity of DERs verified by that date included in the Notice of Verification is insufficient for compliance with N.J.A.C. 7:27-18, a violation of the user source's operating permit or permit and certificate (as applicable) shall have occurred; and
7. In the permit issued pursuant to N.J.A.C. 7:27-22 and 18, the Department has approved the use of the DERs to comply with the emission offset requirements.]
- iii. The permittee shall continue to submit such a Notice of Intent to Use pursuant to (g)3 above for the shortest of the following periods:
- (1) The life of the equipment;
- (2) Until credits which meet the standards for creditable emission reductions at N.J.A.C. 7:27-18.5 are secured for use as emission offsets; or
- (3) Until emission offset requirements no longer apply to the equipment;

- iv. The permittee shall submit each Notice of Intent to Use in accordance with N.J.A.C. 7:27-30.19;
- v. For each use period, the permittee shall submit a complete Notice of Use no later than 120 days after the last day of the use period; and
- vi. The permittee shall hold the DER credits needed for compliance and ensure that they are verified prior to the submission of the Notice of Use.

[(d)](h) The owner or operator of an emissions source [may] shall not use [DERs] VOC or NO_x credits for any of the following purposes:

1. To avoid the applicability of [the emission offset requirements at N.J.A.C. 7:27-18;]:
 - i. The federal requirements for review of new sources and modifications at 40 CFR 51, Subpart I, and/or the State emission offset requirements at N.J.A.C. 7:27-18;
 - ii. The federal prevention of significant deterioration requirements at 40 CFR 52.21; or
 - iii. The federal operating permit requirements at 40 CFR 70.
2. To comply with new source performance standards (NSPS) under 42 U.S.C. §7411, lowest achievable emission rate (LAER) standards under 42 U.S.C. §7503(a)(2), best available control technology (BACT) standards under 42 U.S.C. §7475(a)(4), standards for hazardous air pollutants (HAPs) under 42 U.S.C. §7412, standards for solid waste combustion under 42 U.S.C. §7429 (except for a municipal waste combustor subject to 40 CFR 60, Subpart Cb, using DER credits for compliance with NO_x requirements pursuant to (b)6 above), acid deposition control requirements under 42 U.S.C. §7651 through 7651o, or requirements under N.J.A.C. 7:27-8.12 for documentation of state of the art (SOTA) or under N.J.A.C. 7:27-22.35 [to incorporate] for incorporation of advances in the art of air pollution control;
3. - 5. (No change.)
6. To comply with ozone control standards set under 42 U.S.C. §7511b, except for NO_x RACT or VOC RACT requirements set forth at N.J.A.C. 7:27-16 or 19; [or]
7. To comply with the State prohibition of air pollution at N.J.A.C. 7:27-5 or with the similar requirements at N.J.A.C. 7:27-8.3(j) and at N.J.A.C. 7:27-22.16(g)8; or
8. To avoid having the facility becoming a “major facility”, as defined at N.J.A.C. 7:27-22.1.

[(e)](i) A use of [DERs] DER credits is prohibited if it [results] may result in [an] any of the following:

1. An increase in emissions (from the emissions source or from any other source at the facility or off-site) of any HAP which exceeds the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. §7412(g). The de minimis levels are as currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative correction pursuant to N.J.A.C. 1:30-2.7;
2. An increase in the source's emissions of a HAP from a level below the applicable emission threshold set forth in Table C or Table D at N.J.A.C. 7:27-8, Appendix I, to a level above the threshold; or
3. An increase in emissions of any air contaminant which would cause an exceedance of an applicable limit, including a permit limit, except under the terms set forth for such increases at N.J.A.C. 7:27-30.(a)3 and 5, (b), (c)6 and (d).

(j) Notwithstanding (e)3 above, the Department at its discretion may deny any specific use of Class 3 "permit insurance," if the Department finds that such a use may cause a violation of N.J.A.C. 7:27-5 (Prohibition of Air Pollution) or that the permittee has violated one or more other provisions of the permit (in addition to exceeding the VOC or NO_x limit). In such case the Department shall so inform the permittee in writing and shall give its reasons for the denial.

7:27-[30.14]30.15 [DER] VOC and NO_x credit use: Notice of Intent to Use [DERs]

- (a) [At least 30 days before the use period begins, the] A user shall submit a Notice of Intent to Use [DERs to the registry] in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. [Late notices are governed by N.J.A.C. 7:27-30.11(e).]
- (b) A complete Notice of Intent to Use or amendment is due to the registry 30 days before the first day of the use period. If the registry receives the complete notice late, then the number of DER credits needed for the use shall be increased as follows:
1. Determine the dates which fall within the 30-day period following the date the complete notice is received by the registry;
 2. Pursuant to N.J.A.C. 7:27-30.13, determine the number of credits needed to compensate for the emissions which were emitted on the dates within the use period which also fall within the 30-day period; and

3. Multiply this number of credits by 1.5 to determine the total number of credits that, given the lateness of the submission, is required to be used for those dates.
- (c) Generally a Notice of Intent to Use shall apply to a single emission source. However a single Notice of Intent to Use may apply to any of the following groups of sources, if the use is for compliance with a common regulatory requirement:
1. All emission sources owned by a single person and subject to an averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6; or
 2. A specified group of more than one stationary sources of the same type located at a single facility;
 3. Units of a product manufactured by a single person(including a motor vehicle fuel) during their storage, distribution, and/or use; or
 4. A fleet of motor vehicles.
- [(b)](d) [In the] A Notice of Intent to Use [DERs, the user] shall include [the information, statements and certification required under N.J.A.C. 7:27-30.16, and] the following:
1. Name and address of the user, the user's type of business (for example, electric utility or architectural coating manufacturer), and other pertinent identifying information including the name and telephone number of a contact person;
 2. For the user source(s), the identifying information specified at N.J.A.C. 7:27-30.18(d);
- [1.]3. The requirements in the law, regulation, permit, or order with which the user intends to comply through the use of [DERs] DER credits, together with an explanation as to why the user is using credits to comply with these requirements (such as, because it is a cost-effective alternative to installing new control apparatus; or because control apparatus required by a permit has not yet been installed);
4. The month, day, and year of the first and last dates of the use period;
 5. The following quantification protocol (or, if a protocol approved by EPA or the Department will be used, citation of the protocol):
 - i. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the protocol used to calculate the number of DER credits that need to be held; or

- ii. Otherwise, the protocol that will be used in the Notice of Use to calculate the number of DER credits used;
- 6. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the following:
 - i. The maximum quantity of excess emissions calculated pursuant to N.J.A.C. 7:27-30.13(b)1, both for the ozone season and for the use period as a whole;
 - ii. The number of VOC credits or NO_x credits to be needed for the use calculated pursuant to N.J.A.C. 7:27-30.13(b); and the number of VOC credits or NO_x credits held for the use, with the number for the ozone season and for the use period as a whole given separately; and
 - [2.]iii. For each DER [to be used] credit held for the use, its serial number, the [place] location where the DER credit was generated, and [the date on which the DER was acquired (or is to be acquired);
- 3. The quantity of NO_x DERs and the quantity of VOC DERs that the user has acquired (or will acquire) for use, with the DERs] a statement as to whether the credit was generated during the ozone season or outside the ozone season, with the DER credits of each type (VOC or NO_x) generated during the ozone season and outside the ozone season listed separately; and
- iv. All supporting documentation required to be submitted with the notice pursuant to the quantification protocol specified pursuant to (d)5i above (the documentation must at a minimum must conform with N.J.A.C. 7:27-30.25);
- 7. If the use is one where the full number of DER credits needed for compliance is not required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, an estimate of the maximum number of DER credits that will be used during the use period;
- [4.]8. If the use of [DERs, compared with other methods of complying with applicable emission limits, is expected to result in an increase in emissions of any HAP, the amount of such increase] credits may result in an increase, de minimis or otherwise, in the actual emissions of any HAP, the name of the HAP specie(s) that may have increased emissions and the maximum amount of the increase, together with specification as to whether the increase is expected from the user source, from other source(s) at the facility, and/or from source(s) off-site.
- 9. If the use is one of the “permit insurance” uses listed at N.J.A.C. 7:27-30.14(e), the items required pursuant to N.J.A.C. 7:27-30.14(d)1;

10. If the use is compliance with the emission offset requirements of N.J.A.C. 7:27-18, the legally binding commitment required pursuant to N.J.A.C. 7:27-30.14(g)3ii;
11. The following statements:
 - i. The intended use is not prohibited under this subchapter or other provisions of law; and
 - ii. The quantification protocol to be used in the Notice of Use to calculate the number of DER credits used with the notice meets the requirements of N.J.A.C. 7:27-30.24 and 25;
12. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the following statements:
 - i. All calculations relied on in the notice, including but not limited to quantification of the number of DER credits that need to be held when the Notice of Intent to Use is submitted, have been performed in accordance with N.J.A.C. 7:27-30.13 and with a quantification protocol that meets the requirements of N.J.A.C. 7:27-30.24 and 25;
 - ii. For this use, the user holds the number of NO_x DER credits or VOC DER credits that the user is required to hold, as determined in accordance with N.J.A.C. 7:27-30.13(b), both for the ozone season and for the use period as a whole, and will continue to hold these credits until the Notice of Use is submitted; and
 - iii. The maximum number of NO_x DER credits or VOC DER credits that will be used during the use period pursuant to this notice will not exceed, during either the ozone season or the use period as a whole, the number of credits the user is required to hold when this notice is submitted, as determined in accordance with N.J.A.C. 7:27-30.13(b); and
13. If the use is one of the “permit insurance uses” listed at N.J.A.C. 7:27-30.14(e), the following statements:
 - i. The use will not cause “air pollution” pursuant to N.J.A.C. 7:27-5, including but not limited to unreasonable emission of odors, acid droplets, or materials that cause spotting; and
 - ii. The user source’s actual emission rate will not exceed the ceiling rate, specified pursuant to N.J.A.C. 7:27-30.14(d)1ii, at any time during the use period;

14. If the use is for compliance with emission offset requirements pursuant to N.J.A.C. 7:27-30.14(g), a statement that the use is approved in the permit issued pursuant to N.J.A.C. 7:27-22 and 18, together with the log number of the permit in which the approval is set forth;
 15. Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and
 16. The certification by the user as required at N.J.A.C. 7:27-30.18(g).
- [(c) If a material change occurs in any of the information, statements or certification required under (b) above, the user shall submit an amendment to the registry. The user shall submit the amendment at least 30 days before the use described in the amendment begins. In the amendment, the user shall describe the changes to the information submitted under (b) above, and provide all information and documentation required under (b) above for any DERs listed in the amendment which were not listed in the original notice or previous amendment. Late amendments are governed by N.J.A.C. 7:27-30.11(e).]
- (e) Notwithstanding (a) above, if a person is using DER credits for any of the following, such person is not required to submit a Notice of Intent to Use:
1. A person using credits in full or partial settlement of a monetary penalty pursuant to N.J.A.C. 7:27-30.14(b) due to past emission exceedances; however, this exemption from Notice of Intent to Use requirements does not apply if the settlement is for future exceedances;
 2. A person using credits as part of an affirmative defense demonstration pursuant to N.J.A.C. 7:27-30.14(f); and
 3. A person compensating for NO_x emissions in excess of the applicable permit limit from an electric generating unit during a MEG alert, pursuant to N.J.A.C. N.J.A.C. 7:27-19.24(c).

7:27-~~[30.15]~~30.16 [DER Use] VOC and NO_x credit use: Notice [and Certification] of [DER] Use

- (a) Within 30 days after the end of each use period, the user shall submit a complete Notice [and Certification] of [DER] Use [to the Department and the registry]in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.
- (b) [In the] A Notice [and Certification] of [DER] Use[, the user] shall include the following:
- [1. Attach a copy of the Notice of Intent to Use DERs_which had been submitted for the use period, together with all amendments;

2. For each DER, attach a copy of all documentation and information required to be transferred to the user pursuant to N.J.A.C. 7:27-30.9(a);]
- [3.]1. For each item of information [which was] set forth pursuant to N.J.A.C. 7:27-30.15(d)1 through 6 in the Notice of Intent to Use [DERs](or subsequent amendment thereto), either [confirm] confirmation that the information is still correct[.]; or [provide revised] the corrected information [based on what actually occurred in the use period], together with the basis therefor;
- [4. Make all statements and the certification required under N.J.A.C. 7:27-30.16;
5. State that the user has calculated the number of DERs used in accordance with the same emission quantification protocol used in the corresponding Notice of Intent to Use DERs, and that the user has based the calculation on actual data from the use period; and
6. State that the user has determined that the DERs used have not been used previously or retired, based on information in the registry and in the user's own records.]
2. The number of VOC credits and the number of NO_x credits that have been used, determined as follows:
 - i. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the number shall be determined pursuant to N.J.A.C. 7:27-30.13(b) and shall be the credits identified in the Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15(d)6iii; and
 - ii. Otherwise, the number shall be determined pursuant to N.J.A.C. 7:27-30.13(c);
3. For each DER credit being used pursuant to (b)2ii above, its serial number, the location where the DER credit was generated, whether it was generated during the ozone season or outside the ozone season, with the DER credits used for ozone season compliance listed separately;
4. If the use resulted in an increase in the actual emissions of any HAP, the name of the HAP specie(s) that had increased emissions and the amount of the increase, de minimis or otherwise, together with specification as to whether the increase was from the generator source, from other source(s) at the facility, and/or from source(s) off-site;
5. The following demonstrations:

- i. A demonstration that the required number of DER credits were held by the day they were required to be held, pursuant to N.J.A.C. 7:27-30.12(i); and
 - ii. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, a demonstration that actual emissions of VOC or NO_x during the use period, both for the ozone season and for the use period as a whole, did not exceed the maximum quantity of excess emissions calculated in the Notice of Intent to Use, pursuant to N.J.A.C. 7:27-30.13(b)1;
6. If the use is one of the “permit insurance” uses listed at N.J.A.C. 7:27-30.14(e), the following additional demonstrations:
 - i. A demonstration that the actual emission rate at no time during the use period exceeded the “ceiling rate” specified in the Notice of Intent to Use; and
 - ii. A demonstration that the emission increase resulting from the use, together with the emission increases resulting from any other “permit insurance” uses that were simultaneously implemented at the facility did not exceed 5 tons of VOC or 10 tons of NO_x, during any 12 month period. Such demonstration shall be based on calculation of actual emissions, using the methods set forth at N.J.A.C. 7:27-30.13(c)2i and ii;
7. All supporting documentation required to be submitted with the Notice of Use pursuant to the approved quantification protocol which, at a minimum, shall conform with N.J.A.C. 7:27-30.25;
8. The following statements:
 - i. The use of DER credits has been carried out in accordance with this subchapter and all other applicable provisions of law;
 - ii. All calculations relied on in the notice have been performed in accordance with N.J.A.C. 7:27-30.13 and with the quantification protocol specified pursuant to N.J.A.C. 7:27-30.15(d)5 in the corresponding Notice of Intent to Use;
 - iii. All supporting documentation required to be submitted with the notice pursuant to the approved quantification protocol or under N.J.A.C. 7:27-30.25 is enclosed; and
 - iv. The information in the registry and in the user's own records indicate that the DER Credits used have not been previously used, retired, canceled, or found invalid by the Department or EPA; and

9. Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and
 10. The certification by the user as required at N.J.A.C. 7:27-30.18(e).
- (c) For a use exempted, pursuant to N.J.A.C. 7:27-30.15(e), from the requirement to submit a Notice of Intent to Use, the Notice of Use shall meet the requirements in (b) above, except as follows:
1. For a person using credits in full or partial settlement of a monetary penalty, the following apply:
 - i. In lieu of (b)1 above, the Notice of Use shall include the information required at N.J.A.C. 7:27-30.15(d)1 through 3; however, requirements of N.J.A.C. 7:27-30.15(d)4 through 6 shall not apply;
 - ii. In lieu of (b)2 above, the Notice of Use shall include the number of VOC credits and the number of NO_x credits agreed to by the Department's Office of Air and Environmental Quality Compliance and Enforcement;
 - iii. In lieu of (b)3 above, the Notice of Use shall give the serial number of each DER credit being used;
 - iv. The requirements of (b)4 through 7, and (b)8ii and iii, shall not apply; and
 - v. The Notice of Use shall include the log number(s) of the enforcement action(s) for which the DER credits are being used; and
 2. For a person using credits as part of an affirmative defense demonstration pursuant, or for a person compensating for excess NO_x emissions during a MEG alert, the following apply:
 - i. In lieu of (b)1 above, the Notice of Use shall include the information required at N.J.A.C. 7:27-30.15(d)1 through 5; however, requirements of N.J.A.C. 7:27-30.15(d)6 shall not apply; and
 - ii. The requirements of (b)5 and 6 shall not apply.
- (d) Submission of a Notice of Use shall constitute a confirmation that the DER credits identified pursuant to (b)2 above have been used. These credits shall not subsequently be traded, retired, or used.

7:27-30.17 GHG credit use

(reserved)

7:27-~~[30.16]~~30.18 General notice requirements

- (a) This section establishes general requirements for [a] any of the following notices submitted pursuant to this subchapter:
1. A Notice [and Certification] of [DER] Generation pursuant to N.J.A.C. 7:27-30.7[, a];
 2. A Notice of Transfer pursuant to N.J.A.C. 7:27-30.9;
 3. A Notice of Verification pursuant to N.J.A.C. 7:27-30.10;
 4. A Notice of Retirement pursuant to N.J.A.C. 7:27-30.11.
 5. A Notice of Intent to Use [DERs] pursuant to N.J.A.C. [7:27-30.14 , and a] 7:27-30.15; and
 6. A Notice [and Certification] of [DER] Use pursuant to N.J.A.C. [7:27-30.15. Any of these notices is referred to in this section as a “Notice.”] 7:2-30.16.
- (b) ~~[The generator or user]~~A person submitting a notice shall submit [each Notice] the notice on a form obtained from the registry.
- (c) In each [Notice] notice, the [generator or user] person submitting a notice shall include the following information, as applicable:
1. Information that identifies the generator or user and the generator or user source;
 2. The generation period or the use period;
 3. The emission quantification protocol used to calculate the quantity of DERs generated, needed for compliance, or used;
 4. All supporting information required by the emission quantification protocol used, and all supporting information required under N.J.A.C. 7:27-30.20;
 5. The quantity of VOC and the quantity of NO_x DERs determined pursuant to the emission quantification protocol to have been generated, needed for use, or used, with the quantity for the ozone season and the quantity for the rest of the year listed separately;
 6. The unique serial number assigned under N.J.A.C. 7:27-30.8(c) to each DER generated, needed for use, or used;

7. A statement that the quantity of DERs generated, needed for use, or used has been calculated in accordance with an emission quantification protocol that meets the requirements of N.J.A.C. 7:27-30.20;
 8. A statement attesting that all documentation and supporting information required by the emission quantification protocol or by N.J.A.C. 7:27-30.20 is enclosed; and
- (d) The generator or user, as applicable, shall certify each Notice and all supporting information and documentation required pursuant to the emission quantification protocol used or required under N.J.A.C. 7:27-30.20, as follows:
1. The generator shall certify each Notice and Certification of DER Generation in accordance with N.J.A.C. 7:27-1.39;
 2. The user shall certify each Notice of Intent to Use DERs as follows: “I certify under penalty of law that I believe the information provided in this Notice of Intent to Use DERs is true, accurate and complete. For those portions of the information in this Notice that are based on estimates, those estimates are the result of good faith application of sound professional judgement, using techniques, factors, or calculations approved by the Department or EPA or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information”;
 3. The user shall certify each Notice and Certification of DER Use in accordance with N.J.A.C. 7:27-1.39.]
1. The items specified at N.J.A.C. 7:27-30.7, 9, 10, 11, 15 or 16, as applicable; and
 2. The name and telephone number of the contact person who will provide, to any person who may request it, the opportunity to inspect a copy of the notice and/or any supporting documentation required for the notice or relied on pursuant to the quantification protocol.
- (d) In a Notice of Generation, a Notice of Intent to Use, or (if applicable) a Notice of Use, the generator or user shall include for the generator or user source(s) the following identifying information:
1. If the source(s) is a stationary source or a group of stationary sources at a facility, a description of the source, including any applicable identifying numbers (for example, plant ID number, a stack ID number, and/or a permit ID number); and the address and county of the source, including specification of where it is located within the facility; or
 2. If the source(s) is a mobile source, a nonroad source, or a group of stationary sources at various locations, a description of the source, including any applicable identifying

numbers (for example, vehicle ID number); and the county(s)(and if feasible the specific locations) where the source(s) are operated.

(e) Except pursuant to (f) and (g) below, any person who submits a notice or an amendment thereto pursuant to this subchapter shall include, as an integral part of the notice or amendment, the following two-part certification:

1. A certification, signed by the individual or individuals (including any consultants) with direct knowledge of and responsibility for the information contained in the certified document. The certification shall state:

“I certify under penalty of law that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information.”

2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-1.4, which states:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information.”

(f) The certification at (e)2 above shall not be required if the individual required to sign the certification in (e)1 above is the same individual required to sign the certification in (e)2 above.

(g) Instead of using the certification given at (e) above, a prospective user of DER credits shall certify a Notice of Intent to Use, or an amendment thereto as follows: “I certify under penalty of law that I believe the information provided in this Notice of Intent to Use is true, accurate and complete. For those portions of the information in this Notice that are based on estimates, those estimates are the result of good faith application of sound professional judgement, using techniques, factors, or calculations approved by the Department or EPA or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information”.

[3. The user shall certify each Notice [and Certification of DER Use in accordance with N.J.A.C. 7:27-1.39.]

- (h) If after submitting a notice, the person submitting the notice determines that the notice includes an error, that person shall timely correct the error through the amendment procedures set forth at N.J.A.C. 7:27-30.20. A generator is not relieved of this requirement, even if the credits covered by a Notice of Generation have been verified and the error was not detected by the verifier.

7:27-30.19 Submission of notices

- (a) A person submitting a notice pursuant to this subchapter shall submit the notice on paper to the registry at the address given at N.J.A.C. 7:27-30.8(b). The person shall at the same time also make all other submittals required in this section.
- (b) A person who submits a Notice of Generation, Notice of Intent to Use, Notice of Use, and each amendment thereof, shall also submit a complete electronic copy of the notice or amendment to the registry at <http://www.omet.com>. A complete copy shall include all supporting documentation required pursuant to N.J.A.C. 7:27-30.25(b).
- (c) A user shall also submit on paper a copy of each Notice of Use to the Department at the applicable address(es) listed below:

1. If the user source is located in Mercer, Middlesex, Monmouth, Ocean, or Union County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Compliance & Enforcement
Horizon Center, P.O. Box 407
Robbinsville, NJ 08625-0407

2. If the user source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection
Metropolitan Regional Office
Air and Environmental Quality Compliance & Enforcement
2 Babcock Place
West Orange, NJ 07052-5504

3. If the user source is located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Compliance & Enforcement
1259 Route 46 East, Building 2

Parsippany-Troy Hills, NJ [07054] 07054-4191

4. If the user source is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08102

- (d) A user who is submitting a copy of a Notice of Use to the Department in accordance with (c) above shall submit, with the Notice of Use, a copy of the following documents:

1. A copy of the Notice of Intent to Use;
2. For each credit that was not generated by the user, a copy of the Notice of Transfer that conveyed that credit to the user; and
3. For each batch and partial batch of DER credits that was used, copy of the documents required to be provided to a transferee pursuant to N.J.A.C. 7:27-30.9(b).

- (e) A permittee who generates DER credits through a mobile source emission reduction strategy shall additionally submit the Notice of Generation to the following:

1. To the New Jersey Department of Transportation at the following address:

Transportation Systems Planning
Department of Transportation
1035 Parkway Avenue
Main Office Building
CN 600
Trenton, NJ 08625
Attention: Mobile Source Credit Generation

2. And to the following, as applicable:

- i. If the generator source is located in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union County, or Warren, to the executive director of the North Jersey Transportation Planning Authority (NJTPA) at the following address:

North Jersey Transportation Planning Authority (NJTPA)
One Newark Center, 17th Floor

Newark, NJ 07102

- ii. If the user source is located in Burlington, Camden, Gloucester, or Mercer County, to the executive director of the Delaware Valley Regional Planning Commission (DVRPC) at the following address:

Delaware Valley Regional Planning Commission (DVRPC)
Bourse Building
111 South Independence Mall East
Philadelphia, PA 19106

- iii. If the user source is located in Atlantic, Cape May, Cumberland, or Salem County, to the executive director of the South Jersey Transportation Planning Organization(SJTPO) at the following address:

South Jersey Transportation Planning Organization (SJTPO)
18 N. East Avenue
Vineland, NJ 08360

- (f) A permittee who generates DER credits through conversion of emission offsets to DER credits pursuant to N.J.A.C. 7:27-30.27(a) shall additionally submit the Notice of Generation to the emission offset bank at the address given at N.J.A.C. 7:27-18.8(a).

- (g) A permittee who intends to use DER credits to meet emission offset requirements shall additionally submit the Notice of Intent to Use to the address listed in N.J.A.C. 7:27-18.8(a).

- (h) If a use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any “permit insurance” use listed at N.J.A.C. 7:27-30.14(d) use), the permittee shall additionally:

1. At least seven days before the use period commences, submit a complete Notice of Intent to Use as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.20(b)3 or N.J.A.C. 7:27-22.22(d)2, as applicable, to the following address:

Department of Environmental Protection
Air Quality Regulation Program
CN 027
Trenton, New Jersey 08625-0027
Attention: OMET/Seven-day-notice

2. If the user source is subject to the preconstruction permit requirements at N.J.A.C. 7:27-8, submit the service fee required for a seven-day-notice change at N.J.A.C. 7:27-8.6 to the address given at N.J.A.C. 7:27-8.6(g).

- (i) At least 30 days before the use period commences, if the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge (see Appendix E for a delineation of this area), the user shall additionally submit the Notice of Intent to Use to the federal Land Manager at the following address:

Air Quality Branch
United States Fish and Wildlife Service
P.O. Box 25287
Lakewood, Colorado 80225

7:27-30.20 Amendment of notices

- (a) A person who has submitted a Notice to the registry may subsequently submit to the registry an amendment to the notice for the following purposes:

1. To correct an error in the notice; or
2. To reflect a material change in any of the information, statements or certification in the notice or in any of the supporting documentation included with the notice.

- (b) An amendment shall include specification of the notice being amended, the information being amended, the corrected or changed information, an explanation of why it is appropriate to change this information, and the same certification as is required for the notice being amended.

- (c) Notwithstanding (a) above, none of the following may be amended:

1. For any notice, the identity of the person who is submitting the notice (e.g., for a Notice of Generation, the generator);
2. For a Notice of Generation, the generator source(s) and the dates of the generation period;
3. For a Notice of Intent to Use, the following:
 - i. For any use, the user source(s); the first day of the use period; the maximum number of DER credits that may be used during the use period, both for the ozone season or during the use period as a whole; and the specific DER credits being held for the use (identified by their serial numbers); and
 - ii. For a permit insurance use, the last day of the use period, and the maximum emission rate (that is, the ceiling rate); and

4. For a Notice of Retirement, the number of credits retired (this number may neither be increased nor decreased).

7:27-[30.17]30.21 Geographic scope of trading

- (a) A [DER] VOC or NO_x credit generated in New Jersey may be used [by a user source located] anywhere in New Jersey.
- [(b) A user source located in New Jersey may use a NO_x DER generated outside New Jersey only if the generator source is located in a state that meets the requirements of (d) below, and is located either to the west and/or south of New Jersey or in the same air quality control region as the user source.
- (c) A user source located in New Jersey may use a VOC DER generated outside New Jersey only if the generator source and the user source are located in the same air quality control region, and the generator source is located in a state that meets the requirements of (d) below.
- (d) No DER generated in another state may be used in New Jersey unless:
1. Except as provided in (e) below, the other state has promulgated rules or enacted laws which:
 - i. Require that all notices regarding the generation, verification, transfer and use of DERs be sent to the registry listed in N.J.A.C. 7:27-30.3(d), or to another registry which contains all of the same data as the registry listed in N.J.A.C. 7:27-30.3(d) and which supplies all of its data to the registry listed in N.J.A.C. 7:27-30.3(d);
 - ii. Prohibit a user source from using NO_x DERs generated in New Jersey, if the user source is located in an air quality control region which lies to the south and/or west of New Jersey and does not include any part of New Jersey; and
 - iii. Prohibit a user source from using VOC DERs generated in New Jersey if the user source is located in an air quality control region which does not include any part of New Jersey; and
 2. A written agreement is in effect between the Department and the other state's air pollution control agency, and the agreement:
 - i. Satisfies all applicable requirements established by the EPA for interstate DER trading agreements; and
 - ii. Provides that upon the Department's request, the other state's air pollution control agency will provide the Department with all information and

documentation required to be submitted to that agency regarding DERs generated in New Jersey which are to be used in the other state, and regarding DERs generated in the other state which are to be used in New Jersey.

- (e) The requirements of (d)1ii and iii above do not apply to a DER which:
1. Was generated in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, or in a portion of New York State which is in the New York-Northern New Jersey-Connecticut ozone nonattainment area identified at 40 CFR 81;
 2. Is used in Burlington, Camden, Cumberland, Gloucester, Mercer or Salem County, and was generated in the Philadelphia-Trenton-Wilmington ozone nonattainment area identified at 40 CFR 81; or
 3. Is used in Warren County and was generated in Carbon, Northampton or Lehigh County, Pennsylvania.
- (f) A user who purports to use DERs which do not satisfy the applicable requirements of (a) through (d) above may be subject to penalties for violation of the emission limit for which DERs were to be used for compliance.]
- (b) A DER credit generated outside New Jersey may be used in New Jersey only if:
1. The air pollution control agency of the state where the generator source is located is duly authorized to enter into a written agreement with the Department pertaining to interstate trading of credits;
 2. The Department and the authorized air pollution control agency of the other state have entered into a written agreement that addresses the items listed in (c) below; and
 3. The generator source is located as follows:
 - i. For a NO_x credit, the generator source is located either to the west and/or south of New Jersey or in the same nonattainment area as the user source; or
 - ii. For a VOC credit, the generator source and the user source are located in the same nonattainment area.
- (c) Any written agreement authorizing interstate trading of DER credits shall address the following:
1. Interstate credit tracking procedures that ensure that the Department has reliable access, at a minimum, to information pertaining to the following:
 - i. Each use in another state of a DER credit generated in New Jersey; and

- ii. The generation in another state of a DER credit used in New Jersey;
 - 2. If the other state lies south and/or west of New Jersey, concurrence that no DER credits generated in New Jersey may be used in the other state, unless the generator source and the user source are located in the same interstate nonattainment area; and
 - 3. Provision that, upon the Department's request, the other state's air pollution control agency will provide the Department with all information and documentation required to be submitted to that agency for use in that state of a DER credit generated in New Jersey, or pertaining to generation in that state of a DER credit used (or to be used) in New Jersey.
- (d) A written agreement authorizing interstate trading of DER credits may include provisions authorizing credit verifications performed under the auspices of the other state to be recognized in New Jersey. This would relieve any person using a credit in New Jersey that has been verified under the other state's procedures from the requirement to also have the credit verified, pursuant to N.J.A.C. 7:27-30.10, by a New Jersey verifier. The Department will not, however, enter into an agreement with another state that includes such a provision unless the Department is satisfied that the other state's verification procedures are substantially equivalent to New Jersey's.

7:27-[30.18]30.22 Recordkeeping

- (a) For each batch of [DERs] DER credits generated, the generator shall retain the following records [at the facility where the generator source is located] until five years after the last Notice of Use or Notice of Retirement is submitted to the registry, reflecting that all [DERs] DER credits in the batch [are used, and] (not including any that have been canceled or found to be invalid) have been used or voluntarily retired; the generator shall provide such records to the Department within 15 days after receiving a request from the Department:
 - 1. The Notice [and Certification] of [DER] Generation and any amendment thereto; and
 - 2. All [information] data and other records relevant to documenting [and quantifying] the [DERs generated] generation of the DER credits, as required pursuant to N.J.A.C. 7:27-30.25(c); and
 - 3. Any Notice of Invalidation for a credit in the batch.
- (b) For each DER credit used, the user shall retain the following records [at the facility where the user source is located] until five years after the end of the use period, and shall provide such records to the Department within 15 days after receiving a request from the Department:
 - 1. The Notice [and Certification] of [DER] Generation, the Notice of Intent to Use [DERs], the [Notice] Notice(s) of [DER] Verification, each Notice of Transfer which

documents that the credits used were conveyed to the user, the Notice [and Certification] of [DER] Use, and any [Notice of Retirement or notice that the EPA or the Department has found the DER invalid; and] amendments to any of these notices;

2. All [information] data and other records relevant to documenting [and quantifying] the generation and use of the DER credit(s), as required pursuant to N.J.A.C. 7:27-30.25(c); and
 3. If applicable, any notice that a credit that was used was subsequently canceled, or that the EPA or the Department has found a DER credit used by the user to be invalid; together with the record of replacement of such credits pursuant to N.J.A.C. 7:27-30.12(k).
- (c) If the generator source or user source is a stationary source, the generator or user shall retain at the facility where the generator source or user source is located the records required pursuant to (a) or (b) above.
- [(c)](d) Within 15 days after receiving a request from the Department, a generator, user or verifier shall submit to the Department information which the Department finds reasonably necessary to determine if the generation, verification, proposed use, or use of [DERs] DER credits complies with this chapter and all applicable State and federal laws and regulations. This information includes, but is not limited to, copies of any notice required to be submitted to the registry under this subchapter, all supporting [information] documentation required by the [emission] quantification protocol used[, and all supporting information required under N.J.A.C. 7:27-30.20] or by N.J.A.C. 7:27-30.25.
- (e) The operator of the registry shall retain records of any notifications provided to users pursuant to N.J.A.C. 7:27-30.8(h) until five years after all DER credits in any affected batch (that are not canceled or found to be invalid) are used or voluntarily retired.

7:27-[30.19]30.23 Public availability

- (a) All information submitted to the Department or the registry under this subchapter and any supporting documentation required to be retained by a generator or user pursuant to N.J.A.C. 7:27-30.25 is a public record under N.J.S.A. 47:1A-2. To inspect, copy or obtain a copy of any public record held by the registry, a person shall submit a request to the registry at the address listed in N.J.A.C. [7:27-30.3(d)] 7:27-30.8(b). To inspect, copy or obtain a copy of any public record held by the Department, a person shall submit a request to:

Department of Environmental Protection
Office of Legal Affairs
Attention: Public Records Requests

401 East State Street
CN 402
Trenton, New Jersey 08625-0402

- (b) A generator or user shall make all notices and amendments thereto, as well as any required supporting documentation [and supporting information required for a notice or relied on pursuant to the emission quantification protocol used], available for inspection to any person who requests it.

[7:27-30.20 Emission quantification protocols]

- [(a) Each generator or user shall use an emission quantification protocol that complies with this section. The generator shall follow the protocol to demonstrate that the DERs generated are real, surplus, and properly quantified. The user shall follow the protocol to demonstrate that the amount of DERs needed is properly quantified.
- (b) A mobile source generator or user shall use an emission quantification protocol which complies with all applicable guidance issued by the EPA concerning mobile source protocols, and which requires that the data on which each calculation is based are the most representative, accurate and reliable data available. If the EPA approves a quantification protocol for a specific class of mobile sources, the generator or user shall use that protocol for DERs generated or used by mobile sources within the class.
- (c) Pursuant to the specific emission quantification protocol, a stationary source generator or mobile source generator shall:
1. Describe the actions taken to reduce emissions to generate DERs;
 2. State the degree to the emission reduction is already relied upon in the SIP, and explain the basis for this determination;
 3. Identify whether emissions may be shifted to other equipment or facilities as a result of the actions taken to reduce emissions; and
 4. In accordance with (e) below, establish and document the terms (that is, baseline emission rate, actual emission rate, and the economic output for the generation period) used to calculate the quantity of DERs generated under N.J.A.C. 7:27-30.5(b), and any increase in actual emissions of other emissions sources referenced in N.J.A.C. 7:27-30.5(d).
- (d) Pursuant to the specific emission quantification protocol, a stationary source user or mobile source user shall:

1. Describe the requirements for which the DERs are used (or are to be used) to comply; and
 2. In accordance with (e) below, establish and document the terms (that is, baseline emissions and actual emissions) used to calculate the quantity of DERs needed or used under N.J.A.C. 7:27-30.12(b) and (c).
- (e) To establish and document each term used in the calculation under N.J.A.C. 7:27-30.5(b) and (c) or 30.12(b) and (c) (as applicable), the generator or user (as applicable) shall supply the following supporting information:
1. Include all calculations performed to determine the value of the term, and specify all assumptions made in the calculations, all limitations of the calculations, and any other information appropriate to the specific generation or use strategy;
 2. Include a design margin, and an explanation of the method used to determine the design margin;
 3. Document 1 and 2 above with records from the emission rate measurement/quantification technique identified in (f) below (that is, a copy of the continuous emissions monitoring data, stack test results, parameters monitored for predictive emissions monitoring purposes, emission factors, fuel use records, activity level records, and other relevant documents);
 4. Reference the source of all records provided under (e)3 above;
 5. If the records provided under (e)3 above contain data based on measurements made at the generator source, provide the monitoring or measurement protocol relied on in collecting this data; and
 6. Identify all applicable State and Federal regulations, orders and permits, and specify the applicable limits and requirements set therein for the air contaminant and (as applicable) for the generator source or user source.
- (f) Emission rates from stationary sources shall be measured and quantified as follows:
1. If Federal or State regulations or permit conditions require that the emissions source's emissions be monitored through a continuous emission monitoring (CEM) system during the baseline period described in N.J.A.C. 7:27-30.5(c), generation period or use period, the generator or user shall use the CEM data to determine emissions.
 2. For emissions sources not required to use CEMs, the generator or user shall determine emission rates using one of the emission rate determination techniques listed below. The generator or user shall use the first listed technique which the

emissions source is required to use under any applicable Federal or State regulation or permit condition, or which is in fact being used to determine the source's emissions:

- i. An alternative monitoring methodology set forth in an alternative monitoring plan approved by the Department pursuant to N.J.A.C. 7:27-19.18(b) or approved by the EPA;
 - ii. Source emission testing performed on the user or generator source, as applicable, in accordance with a protocol approved by the Department pursuant to N.J.A.C. 7:27B;
 - iii. A material balance;
 - iv. Source emission testing or other emission measurements conducted on similar emissions sources;
 - v. Calculation using emission factors that differ from AP-42 (as defined in N.J.A.C. 7:27-8.1), which are designed to estimate emissions from the particular emissions source more accurately than AP-42;
 - vi. Calculation using EPA emission factors from AP-42; and
 - vii. For area sources only, an emission estimation model approved or published by the EPA.
- (g) A generator or user need not obtain the Department's approval before using an emissions quantification protocol. If the Department approves any emissions quantification protocol, it will make the protocol publicly available for use by owners or operators of generator sources or user sources to which the protocol applies.]

7:27-30.24 Standards for quantification protocols

- (a) Each generator or user shall use a quantification protocol that conforms with this section and content requirements for quantification protocols at N.J.A.C. 7:27-30.25. A generator or user shall follow the protocol to perform the quantifications required for a Notice of Generation, a Notice of Intent to Use, or a Notice of Use. The generator or user shall demonstrate conformance with the protocol to show that the number of DER credits generated or needed for compliance has been properly calculated.
- (b) A generator shall use a given protocol only if it applies to the generator source and to the specific strategy implemented to reduce emissions; a user shall use a given protocol only if it applies to the user source and to the specific use.
- (c) A quantification protocol shall not be found acceptable by the Department or a verifier unless:

1. The methods and guidance it sets forth conform with all applicable guidance issued by the EPA. If applicable EPA-approved measurement, testing and monitoring methods are available, the protocol shall specify that these methods shall be used;
 2. The method it prescribes for calculating the number of DER credits generated or the number of DER credits needed for compliance has sufficient detail so as to enable the Department, a verifier, or the EPA to evaluate the validity of the calculation;
 3. The protocol requires that the data on which each calculation is based are the most representative, accurate, current, and reliable data available. If a generator or user has actual emissions data available, the protocol shall specify that a generator or user shall use this data in the calculation, as applicable, rather than imputed or estimated amounts; and
 4. For a stationary source, the technique(s) required by the protocol to measure and quantify actual emissions shall be selected in accordance with N.J.A.C. 7:27-30.26.
- (d) If the EPA has approved a quantification protocol that is applicable and that meets the requirements of N.J.A.C. 7:27-30.25, the generator or user shall use:
1. The EPA-approved protocol; or
 2. An alternate quantification protocol that deviates from the EPA-approved protocol, but meets the requirements of N.J.A.C. 7:27-30.25 and has been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use;
- (e) If the EPA has approved a quantification protocol that is applicable, but does not address all the requirements of N.J.A.C. 7:27-30.25, the generator or user shall use a quantification protocol that both meets the requirements of N.J.A.C. 7:27-30.25 and also incorporates one of the following:
1. The EPA-approved protocol; or
 2. Alternate elements that deviate from the EPA-approved quantification protocol, but that have been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use;
- (f) If the EPA has not approved a quantification protocol that is applicable, the generator or user shall use:
1. A protocol approved by the Department and made available pursuant to (h) below;
or

2. Another protocol that meets the requirements of N.J.A.C. 7:27-30.25. The generator or user need not obtain EPA's or the Department's approval before using such a protocol.
- (g) In developing a generation protocol for emission reductions due to implementation of energy efficiency measures, a generator or user is encouraged to refer to and utilize, as applicable, the guidance document "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's Board of Public Utilities (BPU) on April 28, 1993. A copy of this document may be obtained from:

New Jersey Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102.
- (h) Before approving an emissions quantification protocol for any source or class of sources, the Department shall provide an opportunity, announced through a public notice in the New Jersey Register, for comment on the proposed protocol. Once the Department approves any emissions quantification protocol, it will make the protocol publicly available for use by owners or operators of generator sources or user sources to which the protocol applies. Copies of approved protocols may be requested from:

Office of Air Quality Management
Department of Environmental Protection
P.O. Box 418
401 East State Street
Trenton, NJ 08625-0418
- (i) No generator or user may use a quantification protocol, unless they have available and are willing to provide in full the information required pursuant to a quantification protocol that meets the requirements of this section and N.J.A.C. 7:27-30.25.

7:27-30.25 Contents of quantification protocols

- (a) A quantification protocol shall set forth the following:
 1. The emission source, or class of emission sources, to which the protocol applies. Each class shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not any given source belongs to the class;
 2. The generation or use strategy(s) to which the protocol applies;
 3. The formula(s) to be used to calculate the number of DER credits that have been generated during the generation period; the number of DER credits that need to be

held when a Notice of Intent to Use is submitted; the number of DER credits used during a use period; or the quantity of actual emission increases during the use period, as applicable;

4. The method(s) to be used to derive each term used in the formula(s) specified pursuant to (a)3 above (for example, the method to be used for determining “baseline emissions”), including but not limited to:
 - i. Any test method(s) or other technique(s) to be used for determining actual emission increases or decreases, together with specification of the parameters to be measured, the measurement methods to be used (for example, specific methods for continuous emissions monitoring, stack testing, or predictive emissions monitoring) and the rationale for requiring use of these specific methods;
 - ii. For a stationary or mobile source, the method for establishing its activity level, including the measurement methods to be used to collect the activity level data (such as monitoring of fuel use or hours of operation), and the rationale for requiring use of these methods; and
 - iii. For a product, the methods for determining the quantity of product distributed, stored, or used in New Jersey, and the rationale for requiring use of these methods;
5. For a generation protocol, with respect the “economic output” term in the formula, one of the following:
 - i. The unit of economic output to be used in the calculation, together with an explanation of why this is an appropriate unit, specification of the measurement methods to be used to collect the economic output data (such as monitoring of the BTU’s of heat energy supplied), and the rationale for requiring reliance on these methods; or
 - ii. The methods a generator shall use to develop an appropriate unit of economic output for the generator source;
6. The method(s) the generator or user shall use to document the derivation of each term used in the formula(s) given pursuant to (a)3 above, including but not limited to the procedures to be used to compile, summarize, analyze and report emissions data, activity level data, and economic output data;
7. For the air contaminant on which the credits are based (for example, for VOC, if the credits generated or used are VOC DERs), the methods to be used for determining;

- i. Whether the credit generation or credit use has resulted in an increase in emissions of that air contaminant, from other source(s) at the facility or off-site, including but not limited to increases due to a shifting of production to or an increase in activity of the other source ; and
 - ii. If so, the method(s) to be used for determining the quantity of such emissions increase;
 8. The methods for determining the design margin. Such methods shall take into account historical compliance margins for the parameter in question, reflecting the individual generator's or user's past performance in meeting the requirement. In the case of a new requirement, the methods may based either on the individual generator's or user's past performance in meeting past requirements or on an industry average compliance level;
 9. The methods to be used for determining if the generation or use of DER credits has resulted in an increase in the actual emissions of any other air contaminant, including any HAP, either from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site; and if so, the method(s) to be used for determining the quantity of the increase;
 10. For DER credit generation, the methods to be used for determining the following:
 - i. The quantity of product distributed, stored or used in New Jersey, pursuant to N.J.A.C. 7:27-30.4(a)3; and
 - ii. The quantity of recycled materials that was sold for use as a consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process, pursuant to N.J.A.C. 7:27-30.4(a)5;
 11. Any emission factors or constants to be used, together with either a citation of the source of the factors or constants or an explanation of how they were derived; and
 12. Assumptions that a generator or user shall or may make in performing any of the calculations.
- (b) A quantification protocol shall specify the supporting documentation that a generator or user (as applicable) shall provide with a notice, as an integral part thereof. This documentation shall include:
1. Explanation of the following:
 - i. The assumptions made in the calculations, other than those required by the protocol to be used pursuant to (a)12 above;

- ii. If the protocol allows the use of more than one method for monitoring, testing, or otherwise determining variables such as the quantity of emissions, activity level, or economic output), an explanation of why the method used was selected;
 - iii. The steps taken to minimize uncertainty in the methods used and the data on which the calculations are based, including a description of steps taken to assure precision and avoid bias; or if uncertainty cannot be minimized, an explanation of how the calculation method has been modified to account for imprecision and/or bias;
 - iv. If, the generation or use of credits has resulted in an increase, from another source at the facility or elsewhere, in emissions of the same type of air contaminant as that on which the credits are based (for example, VOC emissions, if the credits generated or used are VOC DERs), an explanation of the causes of the increase in emissions;
 - v. For a generation protocol, if the user determined the unit of economic output to be used in the calculations pursuant to (a)5ii, an explanation of why it is an appropriate unit, the measurement methods used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for reliance on these methods;
2. Any calculations performed, including for the determination of:
- i. The number of credits generated, the number of DER credits that need to be held when a Notice of Intent to Use is submitted, or the number of DER credits that were used during a use period;
 - ii. The quantity (if any) of the actual emissions increase of any HAP, including the quantity from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site; and
 - iii. The quantity of the increase or decrease in actual emissions of VOC or NO_x;
3. A listing of all State and federal air quality regulations, orders and permits that apply (for generation protocols) to the generator source or (for use protocols) to the user source, and any emission limits set forth therein for the following:
- i. The air contaminant (for example, VOC or NO_x) on which the credits being generated or used are based; and
 - ii. Any HAP.

4. The data reports and summaries which set forth the data relied on in the calculations, together with adequate labeling and explanation of the data reports and summaries so as to enable proper interpretation.
- (c) A quantification protocol shall specify the data and other records relevant to documenting the quantification performed pursuant to N.J.A.C. 7:27-30.22(a) and (b) that, at a minimum, a generator or user shall retain. Such records will include, but not be limited to, the following data sets, where summary data reports are provided in the Notice of Generation, Notice of Intent to Use, or the Notice of Use:
1. Any emissions data relied on in the calculations described in (a) and (b) above;
 2. For a stationary or mobile source, the data relied on to establish a generator source's or user source's activity level and hours of operation; and
 3. For a product, the data collected to determine the quantity of product distributed, stored, or used in New Jersey; and
 4. For a generation protocol, the data collected to establish the generator source's economic output.
- (d) A quantification protocol shall provide example calculations, based on the formulas and the requirements for calculation at N.J.A.C. 7:27-30.5 or 13.

7:27-30.26 Hierarchies of quantification techniques

- (a) This section sets forth the criteria that shall be used to determine, for a stationary source, the quantification technique(s) to be prescribed by a quantification protocol for determining the quantity of actual emission increases or decreases.
- (b) The specific technique included in a protocol for determining the quantity of VOC or NO_x emission increases or decreases from stationary sources shall be selected as follows:
1. If a federal or State law, rule, permit, or order requires that the emissions source's emissions be monitored through a continuous emission monitoring system (CEMS), the determination shall be based on use of the CEMS data; and
 2. If the emissions source is not required to have a CEMS, the determination shall be based on one of the techniques listed below. The list is a hierarchy, in which the first listed technique is the most preferred, and the technique listed last, the least preferred. For a given emission source, or category of emission sources, a protocol shall use the first listed technique which is required to be used for the emissions source pursuant to its permit; except that if a generator or user is in fact using or prefers to use a

higher-listed technique (i.e., a more preferred technique) to determine the source's emissions, the higher-listed technique shall be used:

- i. An alternative monitoring methodology set forth in an alternative monitoring plan approved by the Department pursuant to N.J.A.C. 7:27-19.18(b) or approved by the EPA;
- ii. Source emission testing performed on the user or generator source, as applicable, in accordance with a protocol approved by the Department pursuant to N.J.A.C. 7:27B;
- iii. A material balance;
- iv. Source emission testing or other emission measurements conducted on similar emissions sources;
- v. Calculation using emission factors that differ from AP-42, which are designed to estimate emissions from the particular emissions source more accurately than AP-42;
- vi. Calculation using EPA emission factors from AP-42; and
- vii. For area sources only, an emission estimation model approved or published by the EPA.

(c) The specific technique included in a protocol for determining the quantity of GHG emission increases or decreases from stationary sources shall be selected as follows:

1. If a federal or State law or rule or a permit or order requires that the emissions source's emissions be monitored through a continuous emission monitoring system, determination shall be based on use of the CEMS data; and
2. If the GHG is an HFC, SF₆, CH₄, or CO₂ emitted from fuel combustion including fuel combustion associated with production of electricity used, and if the emissions source is not required to have a CEMS, the determination shall be based on one of the techniques listed below. The list is a hierarchy, in which the first listed technique is the most preferred, and the technique listed last, the least preferred. For a given emission source, or category of emission sources, a protocol shall use the first listed technique which is required to be used for the emissions source pursuant to its permit; except that if a generator or user is in fact using or prefers to use a higher-listed technique (i.e., a more preferred technique) to determine the source's emissions, the higher-listed technique shall be used:
 - i. Mass/material balance, which, in the case of CO₂ emitted from fuel combustion or associated with electricity use, shall be a balance of fuel and

energy use, as converted to CO₂ emissions using the emission coefficients listed in Appendix D and appropriate efficiencies of equipment;

- ii. Recommended applicable emission factor described in the Emission Inventory Improvement Program (EIIP) Document Series Volume VIII: Estimating Greenhouse Gas Emissions (EPA-454/R-97-004a-g), as amended and supplemented, incorporated herein by reference; a copy of this document may be obtained from the EPA website at www.epa.gov/ttn/chief/eiip/eiip_ghg.htm or by requesting a copy from the Department at the following address:

Department of Environmental Protection
Office of Air Quality Management
P.O. Box 418
Trenton, New Jersey 08625-0418;

Note: There is an “underline” (i.e., _) between eiip and ghg in the above website address.

- iii. AP-42 emission factor;
- iv. Predictive emissions monitoring;
- v. Manufacturer’s estimate or data;
- vi. Industry council or organization emission factor;
- vii. Departmentally approved stack testing performed during the reporting year;
- viii. Departmentally approved stack testing performed during the prior year;
- ix. Stack testing not approved or supervised by the Department;
- x. Permitted allowable emission or other default value;
- xi. Engineering judgment/factor; and

- 3. If the GHG is a PFC, N₂O, CH₄ produced as a by-product of combustion, or CQ emitted from a source other than fuel combustion, and if the emissions source is not required to have a CEMS, the determination shall be based on one of the techniques listed below. The list is a hierarchy in which the first listed technique is the most preferred, and the technique listed last, the least preferred. For a given emission source, or category of emission sources, a protocol shall use the first listed technique which is required to be used for the emissions source pursuant to its permit; except that if a generator or user is in fact using or prefers to use a higher-listed technique

(i.e., a more preferred technique) to determine the source's emissions, the higher-listed technique shall be used:

- i. Recommended applicable emission factor described in most recent USEPA/STAPPA/ALAPCO Emissions Inventory Improvement Program methodology for greenhouse gases incorporated herein by reference; a copy of this methodology may be obtained from the EPA website at www.epa.gov/ttn/chief/eiip/eiip_ghg.htm;

Note: There is an “underline” (i.e., _) between eiip and ghg in the above website address.

- ii. AP-42 emission factor;
- iii. Predictive emissions monitoring;
- iv. Mass/material balance, coupled as necessary with appropriate emission factors and appropriate efficiencies of equipment;
- v. Manufacturer’s estimate or data;
- vi. Industry council or organization emission factor;
- vii. Departmentally approved stack testing performed during the reporting year;
- viii. Departmentally approved stack testing performed during the prior year;
- ix. Stack testing not approved or supervised by the Department;
- x. Permitted allowable emission or other default value;
- xi. Engineering judgment/factor.

7:27-30.27 Interface with other trading programs

- (a) Allowances allocated under the NO_x Budget Program may be converted to NO_x credits, in accordance with N.J.A.C. 7:27-31.6(a).
- (b) Emission reduction credits generated under the Emission Offset Program may be converted to NO_x or VOC credits, in accordance with N.J.A.C. 7:27-18.11.
- (c) Use of DER credits that are based on the conversion of NO_x Budget allowances or emission reduction credits generated under the Emission Offset Program is subject to the geographic

constraints set forth at N.J.A.C. 7:27-30.21 rather than to any corresponding geographic requirements in NO_x Budget Program or the Emission Offset Program.

7:27-[30.21]30.28 Compliance responsibilities

The generator is responsible for ensuring that it has generated [DERs] DER credits in accordance with this subchapter[, and that the DERs are real, surplus, and properly quantified]. The verifier is responsible for making the Notice of [DER] Verification true, accurate and complete. The user is responsible for ensuring that its use of DERs complies with this subchapter[, and that all DERs used satisfy the requirements of N.J.A.C. 7:27-30.8(a)]. In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities.

7:27-30.29 Invalidation and cancellation of DER credits

- (a) If the Department or the EPA determines at any time that a DER credit does not satisfy all of the applicable requirements of this subchapter, the Department or the EPA may find the credit invalid. The Department or the EPA shall effect such a finding by notifying the registry and the holder of the DER credit that the DER credit is invalid.
- (b) If a generator decides, for any reason, to reduce the number of credits claimed for a batch, the generator shall pursuant to N.J.A.C. 7:27-30.20 submit an amendment to a Notice of Generation requesting that a specified number of credits in the batch be canceled.
- (c) Within one business day of receiving a notice that one or more DER credits are invalid, and within one business day of receiving an amendment requesting that one or more DER credits be canceled, the registry operator shall designate in the registry, by serial number, each DER credit that is invalid or canceled. If a part of a batch of DER credits has been found invalid or been canceled, the registry operator shall designate those credits in the batch with the higher serial numbers as being invalid or canceled.
- (d) A generator, holder, or user of a DER credit, who is aggrieved with respect to a finding by the Department that a credit is invalid, may request an adjudicatory hearing, pursuant to N.J.A.C. 7:27-1.32.
- (e) No credit which has been designated as invalid or as canceled may be transferred, verified, retired, or used.

7:27-[30.22]30.30 Penalties

A person who fails to comply with any provision of this subchapter shall be subject to civil administrative penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C:28 and N.J.S.A. 26:2C-19(f)1 and 2. If

there is more than one owner or operator of an emissions source, all owners and operators are jointly and severally liable for such civil administrative penalties.

APPENDIX A

(No change.)

Note: Appendices B through E below are new text.

APPENDIX B

Global Warming Potentials¹ (100 year time horizon)

Gas	Global Warming Potential
Carbon dioxide (CO ₂)	1
Methane (CH ₄)	21
Nitrous oxide (N ₂ O)	310
HFC-23	11,700
HFC-125	2,800
HFC-134a	1,300
HFC-143a	3,800
HFC-152a	140
HFC-227ea	2,900
HFC-236fa	6,300
HFC-4310mee	1,300
CF ₄	6,500
C ₂ F ₆	9,200
C ₄ F ₁₀	7,000
C ₆ F ₁₄	7,400
SF ₆	23,900

¹Source: *Climate Change 1995: The Science of Climate Change, Report prepared for IPCC by Working Group 1, Intergovernmental Panel on Climate Change, Organization for Economic Co-Operation and Development, Paris, France.*

APPENDIX C

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Note: The material below has been excerpted from the "Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)" guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, United States Department of Environmental Protection, on December 22, 1998. A copy of the complete guidance document may be found on the EPA website at www.epa.gov/oeca/ore/aed or be requested from:

*Air & Environmental Quality Compliance and Enforcement
Department of Environmental Protection
P.O. Box 422
401 East State Street, Floor 4
Trenton, NJ 08625-0422*

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II. Definition of High Priority Violations

When a violation is detected, the violation's characteristics shall be compared with the Definition of High Priority Violation given in Parts A and B below. To the extent that the violation fits one or more of the elements of the General High Priority Violation Criteria given in Part A or the High Priority Violation Matrix given in Part B, it shall be designated as a high priority violation and is subject to the Timely and Appropriate Section of this policy.

A. General HPV Criteria

The following criteria trigger HPV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by the EPA and the delegated agency.

1. Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
2. Violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.
3. Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)

4. Violation of any substantive term of any local, state or federal order, consent decree or administrative order.
5. Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.
6. Substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
7. Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
8. A violation of an allowable emission limit detected during a reference method stack test.
9. Clean Air Act (CAA) violations by chronic or recalcitrant* violators.
10. Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan).

*Chronic or recalcitrant violator refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by the Region and the delegated agency that the source should be bumped up into HPV status.

B. High Priority Violation Matrix

The matrix below contains specific criteria for assessing whether violations are high priority. The matrix is set out in six columns that identify: the violation, the means by which the violation was identified (method of detection), the applicable standard, the supplemental significance threshold, percentage in excess of the reference limit or standard and the time in excess of the reference limit or standard. A discussion of each of these elements of the matrix is set out below. Violations not on the High Priority Violation List may nonetheless be serious, but may not be initially subject to the provisions of this policy.

Violations and Method of Detection

The first column lists four types of violations addressed by the matrix. The second column identifies six methodologies for detecting the four types of violations listed in the first column. The following shows the four types of violations and the associated method(s) of detecting violations that are reflected in the first two columns of the matrix. Although the matrix provides specific detection methods for violations, nothing in this policy is intended to limit the agency in using other credible evidence to document a violation.

- I. Violation of Allowable Emissions Limitations
 - A. Reference Method Stack Testing or
 - B. Coatings Analysis, Fuel Samples or Other Process Material Sampling
- II. Violation of Parameter Emissions Limitations
 - A. Continuous/Periodic Parameter Monitoring
- III. Violation of Applicable Standards (non-opacity)
 - A. Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)
- IV. Violation of Applicable Standards (opacity)
 - A. Continuous Opacity Monitoring or
 - B. Method 9 Visual Emissions Readings

Standards

This column identifies the standard(s) for which a violation is being assessed.

Supplemental Significance Threshold

This column provides a supplemental significance threshold (SST) that is to be considered along with the other matrix factors to determine high priority violations. The SST is intended only as a surrogate threshold against which a violation can be judged and obviates the situation that would occur if an emissions limitation was high enough that a less than 15% excursion of the applicable requirement would result in significant environmental impact. The SST is consistent with the level at which a source would be required to obtain a PSD permit for a major modification for the applicable criteria pollutant(s), expressed as an hourly emission rate. The use of an SST is not intended in and of itself to imply that a facility must obtain a PSD permit.

Percent in Excess of Limit/Parameter

This column is the yardstick by which a violation is judged to be a high priority violation. In some cases (i.e., where the word "FOR" connects this column with the last column), the percent in excess of the limit is paired with a time element. To determine the level of excess emissions for which a violation is considered high priority, multiply the applicable standard by the applicable percentage from this column.

Percent of Time in Excess of the Applicable Standard

The percent of time in excess of the applicable standard is based on the operating time of the facility during the reporting period in which the violation was discovered.

This proposal has been filed with the Office of Administrative Law, which will edit it before publishing it in the New Jersey Register. Please refer to the July 6, 1999, New Jersey Register for the official final text of the proposal.

VIOLATION	METHOD OF DETECTION	STANDARD	SUPPLEMENTAL SIGNIFICANT THRESHOLD ¹	% IN EXCESS OF REFERENCE LIMIT/PARAMETER		% OF TIME IN EXCESS OF REFERENCE LIMIT
Violation of Allowable Emissions Limitations	Stack Testing	Any applicable requirement		Any violation of the applicable standard		N/A
	Coatings analysis, fuel samples, other process materials sampling or raw/process materials usage reports	Any applicable requirement	CO 23 lb/hr NOx 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr PM 6 lb/hr PM10 3 lb/hr	>15% of the applicable emission limitation or the supplemental significant threshold (whichever is more stringent)		N/A
Violation of parameter limits where the parameter is a direct surrogate for an emissions limitation	Continuous/Periodic Parameter Monitoring (includes indicators of control device performance)	Any applicable requirement		>5% of the applicable parameter limit	FOR	>3% of the operating time during the reporting period
					OR	any exceedance of the parameter limit for >50% of the operating time during the reporting period ³
Violation of applicable non-opacity standard	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	≤24 hour averaging period (for example, one hour or three hour blocks)	CO 23 lb/hr NOx 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr	15% of the applicable standard or, the supplemental significant threshold, (whichever is more stringent)	FOR	>5% of the operating time during the reporting period ^{4 6}
					OR	any exceedance of the reference limit for >50% of the operating time during the reporting period ³
	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	> 24 hour averaging period		Any violation of the applicable standard		N/A
Violation of applicable opacity standard ²	Continuous Opacity Monitoring	0-20% opacity >20% opacity		>5% opacity over the limit >10% opacity over the limit	FOR	>5% of the operating time during the reporting period ^{4 6}
	Method 9 VE Readings	0-20% opacity		>50% over limit	AND	Any violation of SIP/NSPS limits ⁵
		>20% opacity		>25% over limit		

Table Footnotes:

- Supplemental Significant Threshold is based on PSD significant levels. The significant threshold value is the lb/hr emission rate at 8760 hours which would result in PSD review.
- Based on the applicable averaging period (e.g. 6-minute block averages).
- For the first reporting period. If exceedances occur for more than 25 % of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 25% of the operating time during the second reporting period.
- For the first reporting period. If exceedances occur for more than 3% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 3% of the operating time during the second reporting period.
- Unless the state or local agency concludes that 1) the cause of the violation has been corrected within 30 days and the source has returned to compliance, or 2) the source was in compliance with an applicable mass limit at the time the Method 9 visual reading was taken.
- This would not include any federally approved exempt period (e.g., startup/shutdown/malfunction 40 CFR 60.11), since these would not be violations.

APPENDIX D Emission Coefficients²

**Table A
Emission Coefficients by Fuel Type**

Fuel Type	Pounds CO₂ per unit volume or mass (1 ton = 2000 pounds)	Pounds CO₂ per million BTU
Aviation gasoline	18.355 per gallon	152.717
Distillate fuel (#1, #2, #4 fuel oil & diesel)	22.384 per gallon	161.386
Jet fuel	21.439 per gallon	159.690
Kerosene	21.537 per gallon	159.535
Liquified petroleum gas (LPG)	12.200 per gallon	138.846
Motor gasoline	19.641 per gallon	157.041
Residual fuel (#6 fuel oil)	26.033 per gallon	173.906
Methane	116.376 per 1000 cubic feet	115.258
Flare gas	133.759 per 1000 cubic feet	120.721
Natural gas (pipeline)	120.593 per 1000 cubic feet	117.080
Propane	12.669 per gallon	139.178
Anthracite coal	4933.804 per ton ³	227.400
Bituminous coal	4921.862 per ton	205.300
Subbituminous coal	3723.952 per ton	212.700
Lignite	2733.857 per ton	215.400

²Source: DOE/EIA, Form EIA-1605 Voluntary Reporting of Greenhouse Gases, Instructions, 1997, Appendix B and Appendix C.

³Instead of the DOE/EIA coefficient, the coefficient given for anthracite coal for the “pounds CO₂ per unit mass” factor is derived from data provided in the STAPPA-ALAPCO-EPA report, “Emission Inventory Improvement Program, Vol. VIII, Chapter 1, “Methods for Estimating Carbon Dioxide Emissions from Combustion of Fossil Fuels,” Review Draft, ICF Inc., Washington, D.C., 1998.

Wood and wood waste ⁴	3814 per ton	221.943
Municipal solid waste ³	1999 per ton	199.854

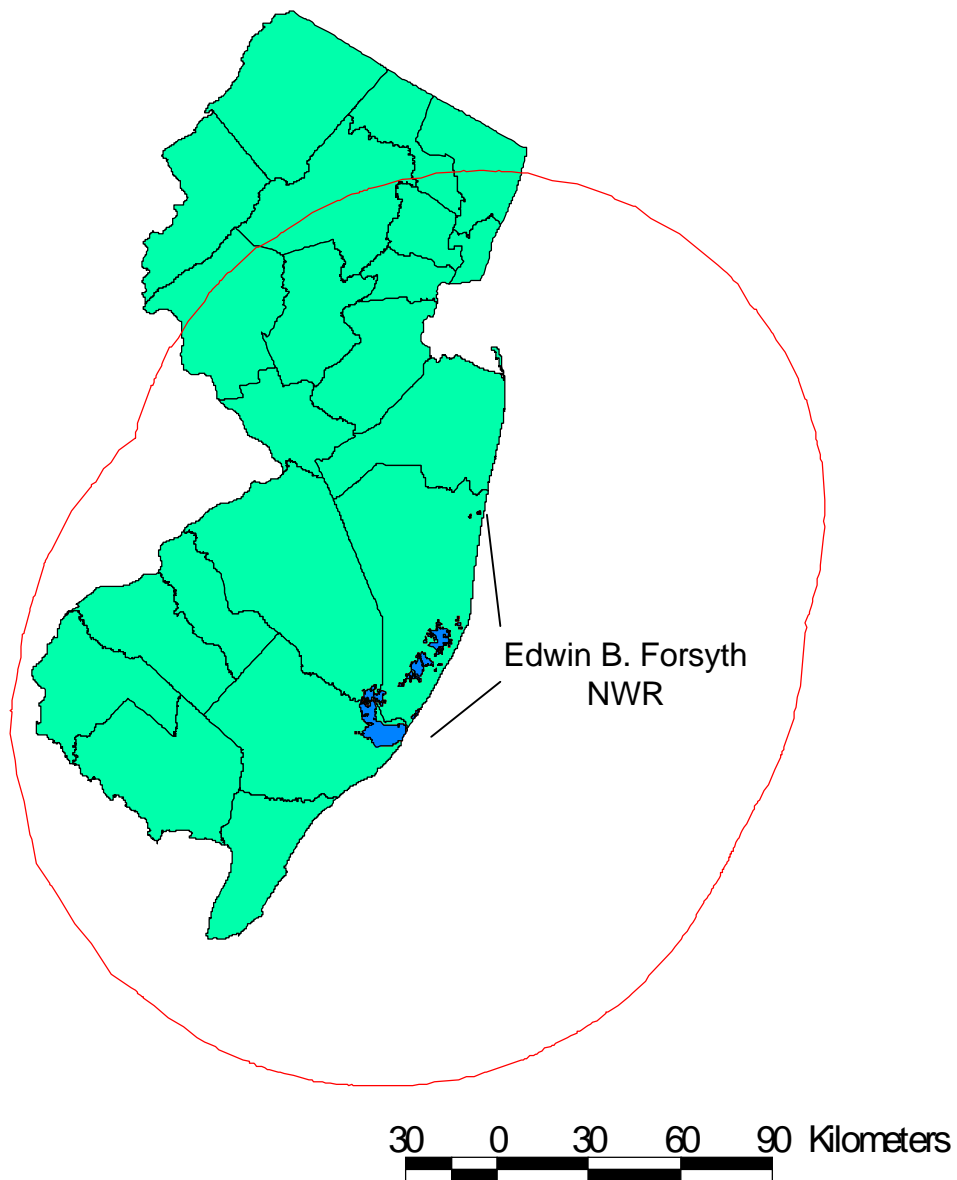
Table B
Emission Coefficients by Energy Type

Energy Type	Pounds CO₂ per Megawatt hour (MWh)	Metric tons CO₂ per MWh
Electricity (U.S. average)	1291	0.586

⁴Net emissions likely to be less than direct emissions because all or part of the fuel is renewable; biofuels contain carbon that is part of the natural carbon cycle balance and will not add to atmospheric concentrations of CO₂.

Appendix E

"Class I Air Quality Area"
100 Kilometer Buffer Zone



7:27-31.6 Interface with the open market emissions trading program

- (a) [NO_x emission reductions made by a budget source during any control period may not be used as the basis for a DER credit under N.J.A.C. 7:27-30.] A person may, under the following conditions, convert an allowance allocated under the NO_x Budget Program to DER credits which may be transferred, retired or used pursuant to the Open Market Emissions Trading Program:
1. The allowance being converted is one of the following:
 - i. An allowance allocated for a given control period to the owner or operator of a budget source located in New Jersey, provided that:
 - (1) The person converting the allowances is the person to whom the allowances were allocated;
 - (2) The last day of the control period for which the allowance was allocated under the NO_x Budget Program is given as the final day of the generation period under the Open Market Emissions Trading Program; and
 - (3) A budget source owned or operated by the person converting the allowance achieved, during the control period, NO_x emission reductions which are equal to or greater than the emissions value of the allowance being converted and which satisfy the requirements for use as the basis for a DER credit under N.J.A.C. 7:27-30.4, 5, and 6;
or
 - ii. An incentive allowance allocated pursuant to N.J.A.C. 7:27-31.8(c) to an electric consumer that reduced its electricity consumption through implementation of an energy efficiency measure;
 2. The person's AAR has submitted an Allowance Transfer Form to the NATS Administrator indicating that the allowances are to be transferred to the [precise identification of this account to be inserted upon adoption] retirement account;
 3. The calculation of the number of DER credits generated shall be in accordance with N.J.A.C. 7:27-30.5. The emissions value of the allowance being converted shall be the quantity of emission reductions on which credits are based, and this quantity is subject to discounting, as applicable, under N.J.A.C. 7:27-30.5(i); and
 4. The person converting the allowances submits a Notice of DER Generation submitted pursuant to N.J.A.C. 7:27-30.7 and 19 in which the reductions are used as the basis for the DER credits.

(b) (No change.)

[(c) Allowances shall not be converted to DER credits and used pursuant to the Open Market Trading Program rules at N.J.A.C. 7:27-30, except as provided at N.J.A.C. 7:27-31.8, which allows electric consumers who earn allowances by saving electricity through energy efficiency projects to elect to receive DER credits, instead of allowances. In such case the NATS Administrator shall permanently retire the allowances that would otherwise have been provided to the electric consumer.]

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(h) (No change.)

(i) The Department may, in its discretion, accept [the conveyance of] discrete emission [reductions] reduction (DER) credits, that have been verified pursuant to N.J.A.C. 7:27-30.10, in full or partial settlement of a monetary penalty [set forth in this subchapter for NOx and VOC emission violations of N.J.A.C. 7:27-8, 16, 19, and 22, and other violations of] in accordance with the procedures for credit use at N.J.A.C. 7:27-30. In determining whether to [accept discrete emission reductions] allow the use of DER credits in full or partial settlement of a penalty and the appropriate amount to accept, the Department shall consider whether the cost associated with acquiring the [discrete emission reductions] credits provides a sufficient deterrent to future violation.

(i)-(l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 7. (No change.)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation		First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(a) Obtain Preconstruction Permit					
Class: Estimated Potential Emission Rate of Source Operation					
1. Less than 0.5 pound per hour		\$100 ⁵	\$200 ⁵	\$500 ⁵	\$1,500 ⁵
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x		\$200 ⁵	\$400 ⁵	\$1,000 ⁵	\$3,000 ⁵
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x		\$600 ⁵	\$1,200 ⁵	\$3,000 ⁵	\$9,000 ⁵
4. Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x		\$1,000 ⁵	\$2,000 ⁵	\$5,000 ⁵	\$15,000 ⁵
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table C) ⁶		\$2,000	\$4,000	\$10,000	\$30,000

Citation		First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(b) Obtain Certificate					
Class: Estimated Potential Emission Rate of Source Operation					
1. Less than 0.5 pound per hour		\$100 ⁵	\$200 ⁵	\$500 ⁵	\$1,500 ⁵
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x		\$200 ⁵	\$400 ⁵	\$1,000 ⁵	\$3,000 ⁵
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x		\$600 ⁵	\$1,200 ⁵	\$3,000 ⁵	\$9,000 ⁵
4. Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x		\$1,000 ⁵	\$2,000 ⁵	\$5,000 ⁵	\$15,000 ⁵
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table C) ⁶		\$2,000	\$4,000	\$10,000	\$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(d)	Preconstruction Permit or Certificate Readily Available	\$100	\$200	\$500	\$1,500

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e)1	Emissions Delected by Stack Tests from Source Operation				

Class: Maximum Allowable Emissions

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1.	Less than 25 percent over the allowable standard	\$500 ⁴	\$1,000 ⁴	\$2,000 ⁴	\$7,500 ⁴
2.	Less 25 through 50 percent over the allowable standard	\$1,000 ⁴	\$2,000 ⁴	\$5,000 ⁴	\$15,000 ⁴
3.	Greater than 50 percent over the allowable standard	\$2,000 ⁴	\$4,000 ⁴	\$10,000 ⁴	\$30,000 ⁴
From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x :					
1.	Less than 25 percent over the allowable standard	\$2,000 ⁴	\$4,000 ⁴	\$10,000 ⁴	\$30,000 ⁴
2.	From 25 through 50 percent over the allowable standard	\$4,000 ⁴	\$8,000 ⁴	\$20,000 ⁴	\$50,000 ⁴
3.	Greater than 50 percent over allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x					
1.	Less than 25 percent over the allowable standard	\$6,000 ⁴	\$12,000 ⁴	\$30,000 ⁴	\$50,000 ⁴
2.	From 25 through 50 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
3.	Greater than 50 percent over allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
For greater than 8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x or air contaminants regulated pursuant to HAP (Table C):					
1.	Less than 25 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
2.	From 25 through 50 percent over the allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
3.	Greater than 50 percent over allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e) Preconstruction Permit and Certificate Conditions and Provisions					
Class: Emissions from Source Operation					
1.	Less than 0.5 pounds per hour	\$400 ⁵	\$800 ⁵	\$2,000 ⁵	\$6,000 ⁵
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x	\$800 ⁵	\$1,600 ⁵	\$4,000 ⁵	\$12,000 ⁵
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x	\$1,200 ⁵	\$2,400 ⁵	\$6,000 ⁵	\$18,000 ⁵
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x	\$2,000 ⁵	\$4,000 ⁵	\$10,000 ⁵	\$30,000 ⁵
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table C) ⁶	\$3,000	\$6,000	\$15,000	\$45,000
N.J.A.C. 7:27-8.3(e) Preconstruction Permit and Certificate Conditions and Provisions detected by Continuous Monitoring System					
See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties ⁵					

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
<u>N.J.A.C. 7:27-8.3(l)</u>	<u>Use DER credits for failure to perform timely testing or failure to install and/or operate control apparatus</u>	<u>violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.4(c)1	Submit Source Specific Testing Protocol	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-8.4(c)3	Conduct Source Specific Testing	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-8.4(c)4	Provide Notice of Source Specific Testing	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-8.4(c)5	Submit Test Report	\$500	\$1,000	\$2,500	\$5,000
N.J.A.C. 7:27-8.4(c)6	Certify Test Report	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-8.4(f)	Conduct Air Quality Impact Analysis	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-8.4(g)	Submit Application for Renewal	\$200	\$400	\$1,000	\$3,000
N.J.A.C. 7:27-8.4(j)	Conduct Air Quality Impact Analysis	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-8.9(a)	Submit Records	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-8.9(b)	Submit Report	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-8.9(c)	Certify Report	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-8.9(d)	Submit Emission Report	\$500	\$1,000	\$2,500	\$7,500

4 Per Air Contaminant Exceeding Allowable Standard--Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable)

5 Based on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

6 NSPS (40 CFR 60)

NESHAPS (40 CFR 61)

PSDAQ (40 CFR 51)

EOR (N.J.A.C. 7:27-18)

TXS (N.J.A.C. 7:27-17)

HAP (TABLE C) (N.J.A.C. 7:27-8, Appendix 1)

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
<u>N.J.A.C.7:27-8.4(r)</u>	<u>Use DER credits for increase in allowable emissions under SOTA, BACT or LAER permit</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			

9. - 21. (No change.)

22. The violations of N.J.A.C. 7:27-22 , Operating Permits, and the civil administrative penalty amounts for each violation, per operating source, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(a) Obtain and Maintain Operating Permit					
Class: Estimated Potential Emission of Source Operation					
1.	Less than 0.5 pounds per hour	\$100 ¹⁰	\$200 ¹⁰	\$500 ¹⁰	\$1,500 ¹⁰
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO ^x	\$200 ¹⁰	\$600 ¹⁰	\$1,000 ¹⁰	\$3,000 ¹⁰
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x	\$600 ¹⁰	\$1,400 ¹⁰	\$3,000 ¹⁰	\$9,000 ¹⁰
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO ^x	\$1,000 ¹⁰	\$2,000 ¹⁰	\$5,000 ¹⁰	\$15,000 ¹⁰
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table C) ⁶	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(b) Obtain Operating Permit Before Operation					
Class: Estimated Potential Emission of Source Operation					
1.	Less than 0.5 pounds per hour	\$100 ¹⁰	\$200 ¹⁰	\$500 ¹⁰	\$1,500 ¹⁰
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO ^x	\$200 ¹⁰	\$400 ¹⁰	\$1,000 ¹⁰	\$3,000 ¹⁰
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x	\$600 ¹⁰	\$1,200 ¹⁰	\$3,000 ¹⁰	\$9,000 ¹⁰
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO ^x	\$1,000 ¹⁰	\$2,000 ¹⁰	\$5,000 ¹⁰	\$15,000 ¹⁰
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table C) ⁶	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(c) Emissions Not Detected by Continuous Monitoring System or Stack Test					
N.J.A.C. 7:27-22.3(d) Proper Operation					
N.J.A.C. 7:27-22.3(e) Other Conditions					
Class: Estimated of Source Operation					
1.	Less than 0.5 pounds per hour	\$400 ¹⁰	\$800 ¹⁰	\$2,000 ¹⁰	\$6,000 ¹⁰
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO ^x	\$800 ¹⁰	\$1,600 ¹⁰	\$4,000 ¹⁰	\$12,000 ¹⁰
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x	\$1,200 ¹⁰	\$2,400 ¹⁰	\$6,000 ¹⁰	\$18,000 ¹⁰
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x	\$2,000 ¹⁰	\$4,000 ¹⁰	\$10,000 ¹⁰	\$30,000 ¹⁰
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP	\$3,000	\$6,000	\$15,000	\$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(e) Emissions Detected by Stack Test Class: Maximum Allowable Emission of Source Operation					
	Less than 0.5 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$500 ⁴	\$1,000 ⁴	\$2,500 ⁴	\$7,500 ⁴
	2. From 25 through 50 percent over the allowable standard	\$1,000 ⁴	\$2,000 ⁴	\$5,000 ⁴	\$15,000 ⁴
	3. Greater than 50 percent over the allowable standard	\$2,000 ⁴	\$4,000 ⁴	\$10,000 ⁴	\$30,000 ⁴
	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NOx:				
	1. Less than 25 percent over the allowable standard				
	2. From 25 through 50 percent over the allowable standard	\$2,000 ⁴	\$4,000 ⁴	\$10,000 ⁴	\$30,000 ⁴
	3. Greater than 50 percent over the allowable standard Greater than 10 pounds through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NOx:	\$4,000 ⁴	\$8,000 ⁴	\$20,000 ⁴	\$50,000 ⁴
	1. Less than 25 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
	2. From 25 through 50 percent over the allowable standard				
	3. Greater than 50 percent over the allowable standard Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NOx, or air contaminants regulated pursuant to HAP (Table C):	\$6,000 ⁴	\$12,000 ⁴	\$30,000 ⁴	\$50,000 ⁴
	1. Less than 25 percent over the allowable standard				
	2. From 25 through 50 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
	3. Greater than 50 percent over the allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
		\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
		\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
		\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴

N.J.A.C. 7:27-22.3(e) Emissions Detected by Continuous Monitoring System
See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties¹⁰
N.J.A.C. 7:27-22.3(e) Operating Parameters Detected by Continuous Monitoring System
See N.J.A.C. 7:27A-3.10(m) for the calculation of civil administrative penalties¹⁰

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(q)	Certify Report	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-22.5(b)	Submit Application for Operating Permit	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
<u>N.J.A.C. 7:27-22.3(uu)</u>	<u>Compensate with DER credits for increase in allowable emissions under SOTA, BACT or LAER permit</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.9(a)	Submit Proposed Compliance Plan for Operating Permit				
Class					
1. Plan Not Submitted		\$1,000	\$2,000	\$5,000	\$15,000
2. Plan Incomplete		\$500	\$1,000	\$2,500	\$7,500

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.9(b)	Submit Proposed Compliance Plan for Renewal of and Significant and Minor Modifications to Operating Permit				
Class					
1. Plan Not Submitted		\$1,000	\$2,000	\$5,000	\$15,000
2. Plan Incomplete		\$500	\$1,000	\$2,500	\$7,500

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.14(d)	General Operating Permit Terms and Conditions				
Class: Estimated Potential Emission Rate of Source Operation					
1. Less than 0.5 pound per hour					
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x		\$400 ¹⁰ \$800 ¹⁰	\$800 ¹⁰ \$1,600 ¹⁰	\$2,000 ¹⁰ \$4,000 ¹⁰	\$6,000 ¹⁰ \$12,500 ¹⁰
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x		\$1,200 ¹⁰	\$2,400 ¹⁰	\$6,000 ¹⁰	\$18,000 ¹⁰
4. Greater than 22.8 pounds per hours, or greater than 5.7 pounds per hour for VOC and NO _x		\$2,000 ¹⁰			
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, TXS AND HAP (Table C) ⁶		\$3,000	\$4,000 ¹⁰	\$10,000 ¹⁰	\$30,000 ¹⁰
			\$6,000	\$15,000	\$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.15(b)1	Temporary Facility Operating Permit Requirements				
Class: Emission of Source Operation					
1. Less than 0.5 pound per hour		\$400 ¹⁰	\$800 ¹⁰	\$2,000 ¹⁰	\$6,000 ¹⁰
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x		\$800 ¹⁰	\$1,600 ¹⁰	\$4,000 ¹⁰	\$12,500 ¹⁰
3. Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x		\$1,200 ¹⁰ \$2,000 ¹⁰	\$2,400 ¹⁰	\$6,000 ¹⁰	\$18,000 ¹⁰
4. Greater than 22.8 pounds per hours, or greater than 5.7 pounds per hour for VOC and NO _x			\$4,000 ¹⁰	\$10,000 ¹⁰	\$30,000 ¹⁰
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, TXS AND HAP (Table C) ⁶		\$3,000			
			\$6,000	\$15,000	\$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
<u>N.J.A.C. 7:27-22.3(vv)</u>	<u>Compensate with DER credits for failure to perform timely testing or failure to install and/or operate control apparatus</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
⁴	Per Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable).				
⁶	NSPS (40 CFR 60) NESHAPS (40 CFR 61) PSDAQ (40 CFR 51) EOR (N.J.A.C. 7:27-18) TXS (N.J.A.C. 7:27-17) HAP Table C (N.J.A.C. 7:27-22)				
¹⁰	Based on each Preconstruction Permit incorporated into the Operating Permit, if applicable, or if not, estimate of air contaminants with the stated emission rate without controls.				

23. - 29. (No change.)

30. The violations of N.J.A.C. 7:27-30, Open Market Emissions Trading, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
[N.J.A.C. 7:27-30.7(b)	Provide information, statements and certification in Notice and Certification of DER Generation		See	Below	
N.J.A.C. 7:27-30.10(d)	Provide information, statements and certification in Notice of DER Verification		See	Below]	
[Base penalty per violation of 30.7(b) or 30.10(d):		\$2,000	\$4,000	\$10,000	\$30,000

The base penalty may be reduced by applying the following factors:

(1) Minor administrative type violation not affecting quantity of DERs	
(2) Violation affects quantity of DERs by 1 through 25%	70% reduction from base penalty
(3) Violation affects quantity of DERs by 25 through 50%	50% reduction from base penalty
(4) Violation affects quantity of DERs by greater than 50%	25% reduction from base penalty
(5) Violation is reported to department and corrected by the filing of an amended Notice]	0% reduction from base penalty
	25% reduction from base penalty

[N.J.A.C. 7:27-30.14(b)	Provide information statements and certification in Notice Intent to Use DERs			See	Below
N.J.A.C. 7:27-30.15(b)	Provide information, statements and certification in Notice and Certification of DER Use			See	Below]
[Base penalty per violation of 30.14(b) or 30.15(b):		\$2,000	\$4,000	\$10,000	\$30,000

The base penalty may be reduced by applying the following factors:

(1) Minor administrative type violation not affecting quantity of DERs	70% reduction from base penalty
(2) Minor violation is reported to department and corrected by the filing of an amended Notice]	25% reduction from base penalty

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
<u>N.J.A.C. 7:27-30.7(a)</u>	<u>Notice of Generation must be true, accurate and complete</u>	<u>See N.J.A.C. 7:27A-3.6 ¹</u>			
N.J.A.C. 7:27-30.9[(c)](a)	Submit Notice of Transfer to registry	\$1,000	\$2,000	\$5,000	\$15,000
<u>N.J.A.C. 7:27-30.9(a)</u>	<u>Notice of Transfer must be true, accurate and complete</u>	<u>See N.J.A.C. 7:27A-3.6 ¹</u>			
N.J.A.C. 7:27-30.10(d)	Submit Notice of DER Verification to registry	\$2,000	\$4,000	\$10,000	\$30,000
<u>N.J.A.C. 7:27-30.10(d)</u>	<u>Notice of Verification must be true, accurate and complete</u>	<u>See N.J.A.C. 7:27A-3.6 ¹</u>			
<u>N.J.A.C. 7:27-30.12(c)-(e)</u>	<u>Use restrictions</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.12(g)</u>	<u>Use period can't begin until Notice of Intent to Use submitted</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.12(i)5</u>	<u>Hold all DER credits when Notice of Use submitted</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.12(k)</u>	<u>Replace invalid DER credits</u>	<u>A violation of this rule provision will be considered a violation of the</u>			

		<u>emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.12(l)</u>	<u>Rectify invalid verification</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.14(a)1</u>	<u>Use DER credits to compensate for alternative VOC control plan</u>	<u>See N.J.A.C. 7:27A-3.10(m)16 for civil administrative penalties for violations of N.J.A.C. 7:27-16.17(m)</u>			
<u>N.J.A.C. 7:27-30.14(a)2</u>	<u>Use DER credits to compensate for alternative NOx maximum allowable emission rate</u>	<u>See N.J.A.C. 7:27A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.13(i)</u>			
<u>N.J.A.C. 7:27-30.14(a)3</u>	<u>Use DER credits to compensate for innovative control technology plan</u>	<u>See N.J.A.C. 7:27A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.23(e)10</u>			
<u>N.J.A.C. 7:27-30.14(a)4</u>	<u>Use DER credits to compensate for MEG alert</u>	<u>See N.J.A.C. 7:27A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.24(c)</u>			
<u>N.J.A.C. 7:27-30.14(a)5</u>	<u>Use DER credits for increase in allowable emissions under SOTA, BACT or LAER permit</u>	<u>See N.J.A.C. 7:27A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.4(r) and 22.3(uu) respectively</u>			
<u>N.J.A.C. 7:27-30.14(a)6</u>	<u>Use DER credits for failure to perform timely testing</u>	<u>See N.J.A.C. 7:27A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.3(1) and 22.3(vv) respectively</u>			
<u>N.J.A.C. 7:27-30.14(a)7</u>	<u>Use DER credits for failure to install and/or operate control apparatus</u>	<u>See N.J.A.C. 7:27A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.3(1) and 22.3(vv) respectively.</u>			
<u>N.J.A.C. 7:27-30.14(d)</u>	<u>Comply with conditions when using DER credits for permit insurance</u>	<u>\$2,000¹</u>	<u>\$4,000¹</u>	<u>\$10,000¹</u>	<u>\$30,000¹</u>
<u>N.J.A.C. 7:27-30.14(g)</u>	<u>Comply with conditions when using DER credits for emission offsets</u>	<u>\$2,000¹</u>	<u>\$4,000¹</u>	<u>\$10,000¹</u>	<u>\$30,000¹</u>
<u>N.J.A.C. 7:27-30.14(h)&(i)</u>	<u>Prohibited uses</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.15</u>	<u>Submit Notice [and Certification] of [DER] Use</u>	<u>\$2,000</u>	<u>\$4,000</u>	<u>\$10,000</u>	<u>\$30,000</u>
<u>N.J.A.C. 7:27-30.16(a)</u>	<u>Notice of Use must be true, accurate and complete</u>	<u>See N.J.A.C. 7:27A-3.6¹</u>			
<u>N.J.A.C. 7:27-30.21(b)</u>	<u>Use must comply with geographic constraints</u>	<u>A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.</u>			
<u>N.J.A.C. 7:27-30.22(a)-(d)</u>	<u>Recordkeeping requirements</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>	<u>\$7500</u>

¹ The Department may reduce the base penalty by applying the following factors:

<u>(1) Administrative type violation not affecting quantity of DERs</u>	<u>70% reduction from base penalty</u>
<u>(2) Violation affects quantity of DERs by 1 through 25%</u>	<u>50% reduction from base penalty</u>
<u>(3) Violation affects quantity of DERs by 26% through 50%</u>	<u>25% reduction from base penalty</u>
<u>(4) Violation affects quantity of DERs by greater than 50%</u>	<u>0% reduction from base penalty</u>
<u>(5) Violation is reported to department and corrected by filing an amended Notice</u>	<u>25% reduction from base penalty</u>

31. (No change.)

(n) - (p) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Comparison with Federal Law statement, addressing the requirements of Executive Order 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

/s/ ROBERT C. SHINN, JR.
Robert C. Shinn, Jr.
Commissioner
Department of Environmental Protection

June 4, 1999
Date